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AMERICAN CITY GOVERNMENT

BY

WILLIAM ANDERSON, PH.D.,

PROFESSOR OF POLITICAL SCIENCE, AND DIRECTOR OF THE BUREAU FOR RESEARCH IN GOVERNMENT, UNIVERSITY OF MINNESOTA

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To
MY MOTHER AND FATHER

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PREFACE

When a writer produces something that is to be classed as a textbook, and especially a college textbook, he and his publisher take risks against which even Lloyds might hesitate to insure them. The eyes which are likely to read his production may be kind but they are exceedingly critical. On the one side stand his professional colleagues who know more about special phases of his subject than he does. They wish to know whether he has covered all the subjects which they deal with in their own courses, whether he has stated the facts correctly, clearly, and with all due qualifications, in a word, whether he has crossed all his *T*s. On the other side stand the hundreds and perhaps thousands of young men and women who may in time peruse his chapters. The text writer has fully as much cause to fear them as to fear their instructors, for they are not bound by any considerations of professional courtesy to "be nice" to the author and his work. If they dislike the book they are likely to say so; if they find nothing worth while in it, or are unable to dig out whatever ore it may contain, the instructor is almost certain to find out the facts at an early date. In either case the book is likely to be discarded, to be replaced by another which presumably is better.

The author in the present case can think of no better use for a preface than to state briefly what he has attempted to do. It has been his aim, in the first place, to stress principles rather than details of fact. An encyclopedia of municipal government has its place, but it is not the first need of the student. In presenting the principles, furthermore, the endeavor has been made to relate them to the several important steps in the normal process of popular government, beginning with public opinion and proceeding through elections and legislation to administration and adjudication. While the structure of government has not been ignored, it has been treated as less important than the working processes of government. Had structure been put first, we should have been practically compelled to give a separate chapter to the office of mayor, since nearly every city has an office under that title as a part of its governmental organization. However, not only does the mayor in one city have powers wholly unlike those of a mayor in some other place, but these powers generally fall under at least two heads, legislation and administration, which constitute distinct steps in the process of government. The author has, therefore, dealt with

these powers where they seemed to be pertinent. Thus the mayor has not been neglected but has been presented, as it were, "in two parts" or more.

In endeavoring thus to portray the process of government in cities the writer has also made an effort to keep before the eyes of his readers the whole series of social and economic groups and forces which play important parts in the urban political drama. While this attempt to vitalize the subject has, unfortunately, not made the study any easier, the author feels confident that it is unwise to over-simplify problems which are, after all, somewhat complex. This view is fortified by the author's belief that the ability and willingness of American college students to do hard work has been much underrated, and that they are among the first to see through dogmatic or inadequate statements. While the book does not describe the administration of the many services such as police and fire protection, education, health, sanitation, and public works, to provide which city governments are created, the attempt has been made to put enough into it for a full term's duty in a course in municipal government. If too much material has been presented for that purpose, some chapters may be omitted; if too little, collateral readings in other works may be assigned.

A preface should not be closed without acknowledgments. In the field of American municipal government every writer owes a debt of gratitude to such contributors as President F. J. Goodnow, Professors W. B. Munro, John A. Fairlie, Leo S. Rowe, and Howard L. McBain, to Albert Shaw, C. R. Woodruff, and the many authors of special studies whose names are cited in footnotes and chapter reference lists throughout this volume. Above all I feel an indebtedness to Professor Munro, whose assistant I once was and whose books I have used as texts for a number of years. I shall be fortunate if I have avoided plagiarism of his works. My colleague, Professor M. B. Lambie, has been so good as to traverse my manuscript and to suggest a number of ways in which it could be improved, and so too has Professor Edward S. Corwin, the editor of the American Political Science Series. Dr. Luther Gulick, Director of the National Institute of Public Administration, has most helpfully criticized my three chapters on municipal finance, and Mr. Fred Telford of the Bureau of Public Personnel Administration has done the same for the two chapters on the municipal civil service. To these men I owe special thanks.

THE AUTHOR.

December, 1924.

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AMERICAN CITY GOVERNMENT

CHAPTER I

THE PROBLEM OF CITY GOVERNMENT

NEWNESS OF THE PROBLEM

The twentieth century has brought to civilized men a group of social and economic problems which have perhaps never been equaled in complexity and in difficulty. The industrial revolution, the rise of organized capital and of organized labor, the revolutionary progress of science and inventions, the reaching out of commerce into the four quarters of the globe, the emergence of internationalism in finance and in many other fields, the spread of education, the growth of population, and the great drift of population toward the cities, have all contributed to make the world a new world, a world whose problems cannot be solved by the old knowledge. Governments everywhere find themselves confronted daily with unprecedented demands for action. The expansion of public activities in the past fifty years has been nothing short of revolutionary, yet it would seem that we are but at the beginning of a movement which will make the new world of to-day seem a very ancient thing indeed to the people fifty years hence. "We think our civilization near its meridian, but we are yet only at the cock-crowing and the morning star." [1] Thus wrote Emerson eighty years ago, yet his words are probably as true to-day as they were then.

In this volume we shall deal with but one of the great problems of the day. Cities, as we know them to-day, are the very centers of the new life of man. They are the result, in one sense, of the social and economic movements of the past two centuries. They are also a cause, a force, which works unceasingly to further the work which has already been done. They are the end of a process which began long ago and which still operates, and they are also a potent means for the creation of ever new conditions. In an infinite degree they are productive agencies, producing material, intellectual, and spiritual goods for all the world. At the same time they are immense consumers of goods and values of all kinds. The moral, social, and

[1] Emerson, Essay on *Politics*, 1844.

political conditions which arise in these hives of life and industry press upon the statesman and the legislator some of their most perplexing problems.

To the people of America the city problem is relatively new. There were no great cities at the time of the Revolution, and not over four per cent of the people lived in the larger towns, of which the largest was Philadelphia (42,444 population in 1790). The writings of Hamilton, Madison, and Jay, the authors of the *Federalist*, as well as those of Washington, John Adams, Franklin, and other leaders, are almost devoid of any mention of the problems to be dealt with in this volume. Hamilton and Jefferson, the most realistic politicians and statesmen of their day because they kept close to the economic facts of life, had some premonitions of what was to come, yet wrote little on the subject. The one hoped for, and the other feared, the rise of manufacturing towns.[2]

Even the men who guided the political life of the nation in the years from the War of 1812 to the Civil War, at a time when England was already being compelled to enter upon a new course of legislation for municipal affairs, said and wrote little about the problem. Wrapped up as they were in the perplexities of the slavery question and the westward movement of population, they saw the city problem but dimly and, as it were, in the offing, a future possibility rather than a present urgency. In the constitutional conventions of New York and Massachusetts in 1820 and 1821, leading rural members expressed fears lest the cities come to oppress the honest people of the countryside. It was feared in Massachusetts that if cities were chartered they would pass by-laws which would "ensnare and entrap" rural folk who might have to go into them on business. In the New York convention it was predicted that the propertyless masses of the city of New York would soon be sufficiently numerous to rule the entire state if they were given the vote.[3]

Such expressions of fear are to be found in other places. Alexis de Tocqueville, the shrewd and perceptive Frenchman who visited

[2] Hamilton, *Report on Manufactures*, 1791; Jefferson, *Notes on Virginia*, 1782, in *Writings*, Ford's ed., III, pp. 268–69, where he says, "The mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body." See also Beard, *Economic Origins of Jeffersonian Democracy*, pp. 421–28.

[3] Massachusetts, *Journal of the Debates and Proceedings*, etc., *of the Constitutional Convention*, 1820–1821, ed. of 1853, p. 194; New York, *Debates and Proceedings of the Convention*, etc., 1821, p. 115.

our land in 1831–32, wrote two excellent volumes on *Democracy in America*, but found one short passage and two footnotes sufficient to exhaust the problems of cities. He thought New York and Philadelphia already too large, although the two together in 1830 had a smaller population than Minneapolis or New Orleans in 1920. "The lower orders which inhabit these cities constitute a rabble even more formidable than the populace of European towns," he wrote, and went on to say: "I look upon the size of certain American cities, and especially on the nature of their population, as a real danger which threatens the future security of the democratic republics of the New World; and I venture to predict that they will perish from this circumstance unless the Government succeeds in creating an armed force, which, while it remains under the control of the majority of the nation, will be independent of the town population, and able to repress its excesses." [4] Such was the comment and conclusion of an unusually intelligent foreigner, himself a man with considerable faith in democracy. Force, armed force, was to be the only hope of city government!

It is unnecessary to speak of the views of Calhoun, Webster, Clay, and the other statesmen of the years before the Civil War. They had little or nothing to say that is of value to us here. Lincoln and Douglas may also be passed over. The questions of free-soil and slavery were uppermost in their minds. With the rebellion of the southern states came new problems, and when the war was ended, reconstruction was the need of the day, and the establishment of a free status for the negroes. Indeed, it can truly be said that the problems of city life, and particularly the problem of city government, did not begin to force themselves insistently upon the American people until the 70's. Then the rapid growth of city populations and expenditures, and the exposure of a most shocking state of corruption in the government of New York city, compelled the people to give some attention to the new situation. When Bryce wrote in the 80's he found the problem of city government already an exceedingly urgent one, not only because cities were already large and important, but even more because at that time, in his oft-quoted words, "the government of cities [was] the one conspicuous failure of the United States." "The deficiencies of the National government" he said, "tell but little for evil on the welfare of the people. The faults of the State governments are insignificant

[4] *Democracy in America*, translated by Henry Reeve, 1904, I, p. 85, note 2; I, p. 311; I, pp. 356–57, note 1.

compared with the extravagance, corruption, and mismanagement which mark the administration of most of the great cities." [5]

From that day to this the United States have become more and more fully conscious of their great city problem. Not only is this true, but in a direct and very practical way, the people have gone forward in the work of reform year after year, and decade after decade, with ever-improving results. Local reform associations, always virile and active, have given rise to state and even national organizations. Local, state, and national publications have been established for the sole purpose of promoting the work of improving urban conditions. Colleges and universities almost everywhere, and even some of the high schools, are giving attention in their courses to the problems of municipal government and urban social conditions. Great sums of money have been donated and are being expended for the further investigation of the problems which have arisen. The daily press and the periodicals give liberally and regularly of their space to the discussion of municipal affairs. In the course of less than fifty years, Americans have had more experience of and received more information about their city governments, than perhaps any other people in the world in an equal period of time. Observation only proves what every intelligent man must believe, that much progress has been made and that more is yet to come.

CITY LIFE AND THE NATIONAL SOCIAL WELFARE

This volume will deal primarily with the problems of city government. We need first, however, to see this problem in its setting as but one phase of the city problem in general. This phrase, "the city problem," embraces all of the special problems, social, economic, political, moral, and intellectual, which arise under urban conditions.

We take note of the city in the first place as a social unit and a social problem. No one can doubt that the life of men, women, and children in cities must be somehow different from life under rural conditions. This point is worthy of careful consideration. The American stock has been drawn from many sources. The English, Scotch, and Irish, the Germans and Scandinavians, as well as many other peoples in Europe, and some in Asia and Africa, have contributed the immigrants who in the course of three centuries have become and

[5] *The American Commonwealth*, 1908 ed., I, p. 637.

are still becoming the American people. Each and every one of these peoples has been developed during the many centuries of recorded history, and for untold centuries before that, under conditions of outdoor life. They were hunters and fishermen, herdsmen and farmers. Their work was in the open air, in rain and in sun. The women and the children shared the hard work and the rigors of life with the men. When the American union was founded our people were still in this condition; more than nineteen out of every twenty lived on farms or in very small villages where conditions were essentially rural.

To-day more than half of the American people already live under conditions of urban life. More than one-fourth of the entire population reside in cities of over 100,000 inhabitants. Here the greater number of the adults work at gainful occupations under roof, cooped in for from seven to twelve hours each day. They work at machines, or at ledgers, or at counters. They have little responsibility for the business in which they are employed. Their work either follows a monotonous routine, or it requires mental concentration, or it calls for quickness and dexterity rather than great physical effort. Many occupations are classed as sedentary. Numerous women, both married and unmarried, work the same long hours as men and under the same conditions. The family life is far from normal. The children, brought up in the noise, the soot, the cramped quarters, and the nervous bustle and tension of our large cities, receive in many cases inadequate attention. Then there is a small class of persons, including men, women, and children, who do no useful work and look forward to none. Life is unsettled. There are thousands of transients in every large city, native born as well as foreign born, ranging from the tramp and the hobo to the wealthy, idle and polished man of the world. In a few years many of them will be gone and others will have come to take their places. Everyone seems to be on the move.

To understand fully the social problems of the city we need to see both the people and the place. One who surveys a modern city from an air-plane, and who, though far removed from the people, keeps their social problem clearly in mind, gets an indelible picture of the city as a social unit. At the center, close-set along the streets, are block after block of high buildings. If the observer could look close enough he could, at certain hours of the day, see dense masses of people moving along narrow sidewalks, while still others in automobiles ride with swift start and stop along the centers of the streets. A little farther out the buildings are less high, and there is an occasional vacant lot.

These are, perhaps, the tenement house and apartment districts. A park or playground lies here or there. Here and there are factories, belching forth smoke. Still farther in the outskirts are the smaller residences. This section, located on a high hill or beside a lake, is well laid out and appears to be the home of the wealthy. That section along the river or the railroad tracks is where the poorer classes live and struggle to pay the rent for or to buy the little properties which the several families call home. But everything runs together; it is hard to separate one thing from another. Out beyond all this, the city seems to trail off indefinably into the country, with a hamlet or suburb barely visible here and there in the distance. The roads and railroads run everywhere, crossing and crossing again.

This is the city as the social philosopher sees it: a large number of people permanently huddled up in an area too small for their sustenance, in a set of buildings quite inadequate for the health and welfare of all, and in surroundings which are neither orderly nor æsthetic. Perhaps, in addition, they are a mixed group of people, speaking different languages, following different customs, and beset with prejudices and misunderstandings. Here are problems of health, of proper recreation, of moral welfare, of education, of assimilation, of protection, of transportation, of child welfare and family life. The school, the church, the settlement-house, and all forms of healthful social organization, find that all their resources and efforts are not too great to meet the emergent needs of a dynamic urban society. There are always new social problems. These problems, let it be observed, are distinct from the political and the economic, although all depend more or less upon one another. The city, as seen from the air-plane or by the social reformer, is not bounded by artificial political boundaries such as divide the Boston metropolitan area, for example, into a number of legally separate municipalities. Social problems are no respecters of such intangible lines as these, but overflow them in every direction.

It is the intention of these sentences merely to sketch some of the salient conditions of city life. They are not confined to the cities of a single state, but exist throughout the length and breadth of the land, from Boston to Seattle, and from New Orleans to Duluth. For this reason the problems here suggested are national in their scope. They are social and economic in their nature. They affect directly the *health* and the virility of the people. What will the American people be physically after some centuries of urban life? Is a large-scale biological process of selection now going on in our cities? Are the people be-

coming adapted to their new and unaccustomed environment, or are the people going to adapt the environment to themselves? The problems here suggested are those of better health administration, better factory laws, sanitation, housing, transportation, garden cities, and city planning in general. Some of the social problems directly affect the *morals* and the religious life of the people. It is evident to all that the moral hazards of city life are different from those of the rural districts and the small towns. We are in the process of throwing off old restraints and attempting to develop new ones. Vice and crime and avarice perform their sinister work within a stone's throw of our homes in cities. Where swollen fortunes are to be found within a few blocks of utter poverty, it is not surprising that the people seek for a new code of economic morals. Where riches are so easily filched from public treasuries, or can be so easily gained through political influence, shall we be surprised to find that public morals sometimes fall very low and that city governments become filled with corruption?

But then, too, while cities bring new hazards to health and to moral codes, they offer also great opportunities for intellectual and artistic development. We must place the good in the scales with the evil. Practically all the great schools of music, of art, and of applied science, and the great institutions of higher learning, are to be found in cities. It is only where great masses of people congregate together, and where there are both wealth and a high order of economic productiveness, that music, art, and learning flourish at their best. If civilization consists in the promotion of these things, then the city is the torch bearer of the procession. It is the contrasts which disturb the social philosopher and such a student of human nature as O. Henry. In the opera house the new soprano is holding her premiere, dazzling a blasé audience with the brilliance of her performance. A policeman on the sidewalk outside is picking a piece of human wreckage from the gutter.

THE ECONOMIC STRUCTURE OF THE CITY

The economic problems of the city are distinct from the social, as the trunk of the tree is distinct from the leaves. When we look at the city as an economic entity, we see a network of businesses and economic relations which almost baffles description. There is, first of all, the financial structure: the banks, the trust companies, the stock and bond exchange, and the clearing house. There is a complicated system of transportation, consisting of railroads, street railways, steamship

lines, terminals of all kinds, motor-bus lines, transfer and taxicab companies, and carriers of other sorts. Factories, great and small, although apparently scattered about without order, actually have a considerable dependence upon each other, and the city in turn upon them. Grain and cattle exchanges, produce exchanges, wholesale houses, brokers' offices, and a host of other businesses engage daily in the traffic in foods. Great warehouses of different kinds provide ample storage space. Then there is the great multitude of retail establishments, from the down town department store to the pettiest corner grocery in the outskirts. It were vain to attempt even to enumerate the many other institutions which go to make up the economic city.

But a mere enumeration and description of its business institutions would not give us a complete picture of the economic city. The city is a great organization for production. It consists not only of banks and railroads, factories, warehouses, and shops, but primarily of a multitude of people considered as producers. The most numerous class in nearly every city consists of laborers, both skilled and unskilled, some organized in unions and some without such organization, who do the physical work of the city. In addition the modern city contains a large number of brain workers and others in the "soft-handed" or "white-collar" employments. Less numerous but highly influential are the professional groups, and the owners and managers of the city's industries and businesses. These and many other groups constitute the personnel of the economic city, the producers of the goods which the city exchanges with the country districts and with other cities, and which provide the stream of income which makes city life possible and desirable. While in this book we must give more attention to the city as a body of consumers, and to the manner in which the people's wants may best be satisfied, we cannot afford to overlook the broad economic foundations upon which the prosperity of the city rests. To ignore this economic structure in a discussion of the politics and government of a city is to ignore the roots, trunk, and branches while studying the tree. A good city government is an asset to the people not only as consumers and citizens, but also as producers.

THE CITY AS A PROBLEM IN LOCAL GOVERNMENT

The third phase of the city problem which presents itself to us is the *political and governmental*. It is this phase which will occupy our

attention throughout the greater part of this volume. The city, we learn from history, is the most natural of political units. Before there were states, and nations, and empires, cities existed and administered their local affairs. At various times in history, indeed, the city or city-state has been the chief if not the only political unit known to men. The city-states of antiquity and of the middle ages supported armies and navies and sent them forth on wars of conquest. Empires have arisen and have fallen into decay, and in their ruins have appeared again the cities from which they arose. The persistence of Rome, of Athens, of Constantinople, of Paris, as political entities through centuries of war and destruction, through eras of political growth and political decay, is no mere accident. Wherever cities exist they are distinct entities for the management of public affairs. City conditions differ so clearly from rural that cities have always a political life and organization separate from that of the countryside which surrounds them. At times the country districts are dominated by the nearest great city, as in the city-states, but even where this is not the case the city is separated from the larger area at least for some local purposes.

We are, of course, particularly concerned with the problem of city government in the United States. Here we find many different units or areas of government, large and small, all of which perform some useful work. There is a *national government*, which under the federal constitution looks after some of the general interests of the American people. Next come the forty-eight *state governments*, to which are reserved the numerous powers of government not delegated to the national authorities. But everywhere the states find it necessary and wise to provide for several overlapping series of local government areas. All the states have *counties*, or some equivalent thereof. The functions of counties vary from state to state, and even more strikingly from one section of the country to another. Almost everywhere counties exist as divisions of the state for judicial purposes and for law enforcement. In addition they have, in various states, functions connected with the state financial system, the highways, the registration of titles, and certain functions in the fields of education, health, social welfare, and poor relief. In the northeastern section of the country, from Maine to the Dakotas, south to Oklahoma and Arkansas, and back by way of Missouri, Illinois, Ohio, and Pennsylvania there are also systems of *towns*, or areas equivalent thereto. These exist mainly for minor rural local purposes, but their functions and their importance vary from state to state. *School districts* are to be

found almost everywhere, and many other varieties of special districts exist in one or more states, such as drainage and irrigation districts, park, sanitary, police, and road districts. Small semi-urban settlements of a few hundred or a few thousand inhabitants very frequently have separate corporate existence as *incorporated towns*, *villages*, or *boroughs*. Finally there are the INCORPORATED CITIES, with which this volume is primarily concerned. They are distinguished from the other local units by their small areas, their large and highly congested populations, the existence within their limits of the problems of city life, and usually by the possession of charters and special acts of legislation authorizing them to provide their inhabitants with an extensive range of important public services. The government of these cities is, in many respects, the most important problem of local government as such which the American people must solve.

The problem of city government is important both extensively and intensively. It is *extensively important* because to-day cities directly affect the lives of more people than is the case with any other unit of local government except the county and the school district. To-day more than half of the American people live in incorporated places, usually called cities, having over 2,500 inhabitants each. In 1920, 54 million people were reported to be living in urban territory, as against 51 million dwelling in rural districts. Over 37 million persons were living in places having over 25,000 inhabitants each. It should be added, also, that many of the persons reported to be living outside of cities actually work there. Perhaps it is not an exaggeration to say that from 55 to 60 per cent of the American people come into direct contact during a considerable portion of their lives with the officers and the services of city governments. As against this number, less than 9 million in 1920 lived in incorporated places having less than 2,500 inhabitants, places which we may class as "villages," and less than 43 million lived in "other rural territory." In the matter of population, we have reason to believe, our country has reached a great turn in the road. From this time on the majority of the American people must look forward to spending their lives in cities.

Intensively, also, the question of city government has great significance. It is a fact of everyday observation that city government means much more to the people than township, or village, or county government. Few indeed are they who do not know the city from which they come, who cannot speak with pride of its advantages and with some knowledge of its government and politics. On the other

hand, the names of counties or townships are seldom known beyond the limits of the state, there is nothing so distinctive about them that one may boast itself much better than another, and the popular ignorance of their affairs is usually appalling. The city and its affairs are "set on a hill," whether the city will or no, but the county has been neatly and not inappropriately labeled "the dark continent of American politics."

The services rendered by cities to their people are almost innumerable. Their activities touch almost every department of the life of men. The people who live in cities become more and more dependent upon them. As cities grow larger they take a greater and greater amount of the people's income in the form of taxes. It is almost an axiom that the larger the city, the more numerous and varied its services, and the larger its per capita annual tax levy. It is not at all uncommon for a large city to collect as much as $50 per capita per year in various forms of taxes, an amount which equals $250 per year per family of five persons; and this money is all spent by the city, wisely or unwisely, upon municipal services. Tax collections in smaller cities run as low as $10 per capita, yet the average, even for cities of 30,000 to 50,000, is over $25. These items of public expenditure can hardly be compared with the pitifully small sums levied by some rural counties and towns for the upkeep of their meager services. While statistics for rural towns are not easy to get, it is reported that some counties levy as little as $1 per capita per year for all purposes. It is clear, then, that such units of government can mean but little in the lives of their people compared with the importance of the city government to the city dweller. Except for roads, schools, and the post office the American farmer is to this day very largely independent of public services, but the city dweller could not live if his city did not perform for him a very extensive list of functions.

PHASES OF THE PROBLEM OF CITY GOVERNMENT

The pages which follow will be devoted primarily to the politics and government of American cities. The subject divides itself naturally into certain major branches, of which we may be permitted to take a preliminary bird's-eye view.

1. **External relations.** While American cities do not constitute independent states, with departments of foreign affairs, they have certain relationships with other governments which need to be ana-

lyzed with care. The federal government, the state government, the county, the school district, and other units, have each their separate and distinct relationships to the city.

2. **The municipal corporation.** Every city that is worthy of the name has a distinct legal existence as a municipal or public corporation. As such the city is distinct from the mass of its members. As such it has legal powers and rights on the one side, and legal responsibilities and liabilities on the other.

3. **The municipal body politic.** The membership of the municipal corporation is deserving of a close study. Who are the members, and what are their characteristics? Which of them have the voting privilege in corporate affairs? What other rights and duties have they?

4. **The electorate in action.** The social and legal facts as to the membership of the corporation need to be supplemented by a study of the citizens in action. Among the functions which fall to or have been imposed upon the citizens are the formulation of public opinion, the organization of parties for united action, the nomination and election of officials, the adoption of charters and ordinances through the initiative or referendum or both, and various others. The problem here is as to the nature and extent of popular control over the city government.

5. **The municipal organization.** Every city government has a legislative and an administrative department, and there are also state or municipal courts within the city to perform the local judicial functions. But cities vary to an almost unbelievable extent in their municipal organizations. Some have governments in which the council is clearly dominant. In others the mayor has been given extensive and important functions. In recent years a great number of cities have discarded the older forms of organization in favor of the "commission plan" or the "city manager plan." These problems of organization are among the most important with which we have to deal.

6. **Municipal legislation.** The process by which ordinances are made will furnish the subject-matter for one chapter.

7. **The administrative process.** Far more important than the making of ordinances in the modern city is the process of carrying on the multifarious public services which modern cities perform. In this connection it is necessary to study the municipal civil service, or the problems of personnel; the organization and operation of departments; the making of the municipal budget, and its enforcement; taxation and borrowing; and purchasing, contracting, and the performance of public work.

8. **Municipal functions.** Finally it is necessary to get a picture of the numerous functions now performed by city governments for their people, to note the tendency of these functions to increase, and to consider the wisdom of further extensions of public activities.

THE INFLUENCE OF CITIES ON NATIONAL INSTITUTIONS

In the preceding pages we have stated briefly some phases of the city problem which we think it important to keep in mind throughout the study of city government. We wish now, in concluding the chapter, to call attention to the important influences which cities may have upon the nation as a whole.

At the beginning of the Revolution, Boston and Philadelphia together had probably less than 60,000 inhabitants, and considerably less than two per cent of the national population. Yet it is not a great exaggeration to say that the Revolution was started in and to a large extent by the inhabitants of these two towns. In other countries the experience has been much the same. Everyone is familiar with the influence of London on the national affairs of the British Isles. Paris has had a still more dominant voice in the political affairs of France. In Russia, which is predominantly a nation of peasants, the revolutions of 1917 were carried out in the two cities of Petrograd and Moscow containing less than three per cent of the national population, by an organized and militant group which in each case constituted probably less than a majority even in these cities. Nevertheless these revolutionary movements succeeded in gaining control very quickly not only of the smaller towns but even of the rural districts. There is perhaps no need to point out the importance of the influence of Dublin and Belfast during the recent unhappy struggles in Ireland, or to name further examples of the same sort.

It would be too strong a statement to assert that as the city goes, so goes the nation, yet few would venture to deny that cities exercise an influence upon national affairs out of all proportion to their numbers. Modern democracy had its most conspicuous beginnings in urban places, in the communes of France and Belgium, and in the English boroughs. Urban democracies have carried on long and persistent struggles against privilege in all its forms. Having little property to lose, the masses in cities have not been afraid to stake all on a contest for liberty. Revolutions of the boulevards are frequent occurrences in

history. Having much to gain by so doing, urban plutocracies have frequently used their great financial powers to control city governments and state legislatures, if not the national government itself. Farmers and the inhabitants of small towns can and do organize for political action. They frequently win conspicuous successes. On the whole, however, they are not in a strong position. Public opinion is very largely made in the cities, which are the centers of communication and publication. Farmers are scattered, they have not the best means for getting information, and they are divided among themselves by certain conflicting interests and the competitive nature of their business. Though they own their farms, they are dependent upon middlemen and consumers in the city for the sale of their products, and upon urban manufacturers, wholesalers, and retailers for the goods they need on the farms.

It is unquestionable, therefore, that the nation as a whole has a keen and direct interest in the political ideas and institutions of its cities. Most of our American constitutions were established by rural leaders to serve a rural people. To-day these constitutions no longer serve as well as they once did because we have become an urban industrial and commercial people. In the cities, from this day forth, the greater number of the people will obtain their education and their training in self-government. From the cities will come many of the great state and national leaders. "Democracy needs local self-government as its foundation," says Bryce.[6] Unless the democracy of the city is sound, what hope can there be for the nation? In wisdom, honesty, and efficiency, can the national government be far above the average city? Such are the questions which we must ask ourselves. There are those who will answer blithely that "the city is the hope of democracy." Others will substitute the word "despair" for "hope" in this quotation. If this volume does not give a direct and unqualified answer to these questions, it will at least serve to throw some light upon some phases of the problem.

REFERENCES

The city problem generally is so broad a topic that it is impossible to suggest any one work which will prove satisfactory. Attention may, however, be called here to that excellent work, *A Bibliography of Municipal Government in the United States*, Cambridge, Mass., 1915, by Professor W. B. Munro of Harvard University. Here may be found cited books and articles upon

[6] *Modern Democracies*, I, p. 320.

all phases of the politics, government, and administration of cities, as well as some upon urban social and economic conditions (see pages 262–66, 372–81).

In addition the student would do well to acquaint himself with the *National Municipal Review* (monthly, New York), and *The American City* (monthly, New York), as well as with any state publications dealing with municipal affairs.

The social problems of cities have also been dealt with very extensively in publications of recent years. Special attention may be directed to such studies as *The Pittsburgh Survey*, 6 vols., New York, 1909–14, as well as other surveys by the Russell Sage foundation, and others; to various studies by settlement house workers, such as Jane Addams, *Twenty Years at Hull House*, New York, 1911, Mary K. Simkhovitch, *The City Worker's World in America*, New York, 1917, R. A. Woods, *The City Wilderness*, Boston and New York, 1899; and R. A. Woods and A. J. Kennedy, *The Settlement Horizon*, New York, 1922; and to the numerous special studies which have been made by students in our leading urban universities, many of which have found their way into print. For material of this character see Munro's bibliography, pages 262–66, 372–81, and also current references in the *Survey-Graphic* (monthly, New York) and in the *American Journal of Sociology* (monthly, Chicago).

The economic foundations of city life are seemingly so obvious that very few have undertaken to write upon them as such. See, however, N. S. B. Gras, *Introduction to Economic History*, New York, 1922, for a brilliant new interpretation of the economic development of cities. A. F. Weber, *The Growth of Cities in the Nineteenth Century*, New York, 1899, is still the best book in its field. It throws much light upon both the economic and the social structure of urban communities. In 1922 Mr. Malcolm Keir of the Dartmouth College department of economics published a very useful 4-page outline for a thesis in economics entitled *An Analysis of a City*. There is an inexhaustible store of material on urban economic conditions in publications of the federal census bureau and department of commerce, in financial and trade journals, in publications of local chambers of commerce, etc., but there have been few if any complete and thorough-going examinations of the actual economic organization of any great American city.

Materials on municipal organization and the process of government in cities will be referred to in subsequent chapters.

CHAPTER II

THE GROWTH OF CITIES IN THE UNITED STATES

THE COLONIAL PERIOD

The manner in which the two American continents have been peopled and developed by the white nations of Europe is one of the chief wonders of modern times. It is a little more than four hundred years ago that Columbus, sailing courageously westward upon a forbidding and trackless sea, drew back the curtains which veiled an entire hemisphere and disclosed the Americas to the eyes and ken of the then civilized world. To us it seems that his startling discovery was at first inadequately appreciated. Men were not able at once to grasp its meaning. A century passed without any important permanent settlements in any part of the present United States. Then, about three hundred years ago, there were established English settlements at Jamestown (Virginia) and at Plymouth (Massachusetts), to be followed in a few decades by other English settlements up and down the coast from the Carolinas to Maine. By 1650 the discontented in all parts of Europe were beginning to turn eyes toward America. It is reported that in 1643 "there were men of eighteen different languages" in New Amsterdam. Already in the seventeenth century this little Dutch city was troubled by the problem of governing peoples of dissimilar speech and different national customs, a problem which causes anxiety in not a few American cities down to the present time.[1]

We should not overemphasize these beginnings. Had a census been taken in the English colonies in America two hundred years ago, at about 1723, the total number of persons, including free whites, indentured servants, and blacks, would probably not have exceeded 500,000. No cities, in the modern sense, existed. There were a few large towns. Boston had about 11,000 inhabitants, Philadelphia nearly 8,000, and New York about 7,500. Of the three, Philadelphia was incorporated for local government as a "borough" and New York as a city, but

[1] Thwaites, *The Colonies, 1492–1750*, p. 201; Peterson, *New York as an Eighteenth Century Municipality, Prior to 1731*, p. 2.

Boston was destined to spend another century as a mere "town." The only other communities of any size in the colonies were Salem, Massachusetts, and Newport, Rhode Island, including the town of Providence, both unincorporated. The latter had less than 5,000 people even in 1730. Eleven other towns or places had been incorporated as boroughs or cities, but of some of them it may be said as Jefferson said in naming the towns of Virginia: "There are other places at which, like some of the foregoing, the *laws* have said there shall be towns; but *nature* has said there shall not, and they remain unworthy of enumeration." Cities, indeed, were few and far between in the early days of American life.[2]

BEGINNING OF THE NATIONAL ERA

We step down the years, then, to 1790, when the first national census was taken. This was three hundred years after Columbus, and about one hundred and thirty years ago. The American people had already grown proud and vigorous. As colonists they had first settled the entire Atlantic seaboard, and had then carried on a long struggle for self-government, which culminated in the throwing off of a stubborn king. They had passed through years of war and political travail, and had finally established themselves under the national constitution which still controls their government. Washington was president, Jefferson, secretary of state. The people were, in numbers, 3,929,625, of whom over 750,000 were negroes. What were then the chief American cities? Only five towns had over 8,000 population; a sixth, Salem, Massachusetts, stood just under this line. At the head of the list stood the borough of Philadelphia, with 42,444 people. New York stood next with 33,131. Boston had 18,038, Charleston, South Carolina, 16,359, and Baltimore 13,503. Of the leading six, Boston, Salem, and Baltimore, were mere towns in their form of government. Charleston had been incorporated as a city at the end of the Revolutionary War. Only New York and Philadelphia could claim "ancient" municipal constitutions. The total population of the six was 131,396, or approximately that of such a city as Houston, Texas, Grand Rapids, Michigan, Scranton, Pennsylvania, or Springfield, Massachusetts, to-day. In fact, the six combined had only 3.3 per cent or one-thirtieth of the

[2] Bureau of the census, *A Century of Population Growth*, pp. 4–14; Fairlie, *Essays in Municipal Administration*, p. 50; Jefferson, *Notes on Virginia*, in *Writings*, Ford's ed., III, p. 213.

total national population. The Americans were primarily and preponderantly an agricultural people. The men who drafted our national constitution did so not for an urban and industrial people, but for one engaged in farming, fishing, and small trade. The president himself was a farmer who loved to live close to the soil.[3]

At first glance the migration from Europe and Africa to America of some tens of thousands of people, and the rise of a nation of four million souls in two hundred years may not appear in any sense a great achievement. Mere movements of people are not uncommon events in history. Were there nothing more than this, even with the then prevailing difficulties of ocean transportation, there would be little need of comment. What is important for us is the foundations which were so quickly laid for an American civilization. The peoples came not primarily for war and plunder, but for economic betterment, for religious freedom, and for civil liberty. Many fled hither, undoubtedly, to escape prosecution for misdeeds at home, or were sent here as a punishment. From Africa, by force and treachery, were brought thousands of uncivilized negroes, here to be sold for better or for worse, into the service of the dominant whites. The latter came mainly from the British Isles,—English, Scotch, Irish, and Welsh,—but there were natives also of nearly all the other western European states of the day, from the Scandinavian states south as far as Spain. There were Catholics as well as Protestants, although the latter predominated and generally kept control. Thus America became from the beginning the melting pot of creeds and peoples, where each group struggled for rights and recognition. The cosmopolitan character of the population was most noticeable in the seaboard towns.

The prevalent language, laws, and institutions, however, were those of Great Britain. The Dutch and the Swedes soon gave way upon these points. Almost from the beginning of English settlement in Virginia and Massachusetts the sturdy colonists, under their charter grants, began to weave a web of English local institutions. They had their townships or parishes and their counties for rural districts, and the borough organization for the urban towns or places which expected to be such.[4] These units of local government were steadily developed

[3] Bureau of the census, *A Century of Population Growth*, pp. 10, 11, 15.

[4] On local institutions in the colonial period, see especially Howard, *An Introduction to the Local Constitutional History of the United States*, vol. I, "Development of the Township, Hundred, and Shire"; Fairlie, *Essays in Municipal Administration*, ch. 4, "Municipal Corporations in the Colonies"; a series of monographs in

and adapted, by law and custom, to serve the local needs of the various colonies. They came very quickly to differ from colony to colony, and to be different also from those of England. Through all changes an essential similarity was retained. The spirit of independence, of local self-government, pervaded every branch of the local administration. Aided by the healthy neglect of their affairs shown by the British government, the colonists developed a genius for self-help. Local self-government became an important part of the everyday common life. Thus it happens that while in England the institutions of local government were reaching their lowest point, through corruption and indifference, it is safe to say that in America, where wealth and privileges had not yet accumulated, local administration was essentially sound. Men needed but to be given this social responsibility to develop the ability to conduct their own affairs.

These were the local institutions and this the situation into which were poured the ever-new increments of immigrants from the British Isles and the continent of Europe. They helped to mold it and were themselves molded by it. It is of interest to note, therefore, that while the states and the nation went through a period of agony while adjusting their machinery to the needs of a newly-won status of independence, local institutions were carried from the colonial through the revolutionary and constitutional periods almost unchanged. They had become a part, as it were, of the American habit of mind. Indeed, with the exception of some changes yet to be noted in city government, our local units are to-day, in powers and organization, at least, essentially what they were long before the Revolution.[5]

the Johns Hopkins University Studies in Historical and Political Science; and various municipal and county histories.

The student will understand that *borough* is an old word of Anglo-Saxon origin which is still used in England to designate a chartered municipality. In America we use instead the word *city*. It would be difficult to give a precise definition of either term, but in general both are applied only to urban, and not to rural places. On the other hand, a *township* or a *town* is usually a small rural district organized under general law for purposes of local government. Such an area usually has no urban population and no charter. *Counties* are the largest subdivisions of the state for administrative purposes. A county may be either urban or rural or both, but almost everywhere counties lack charters and are governed under general laws. As areas of local government *parishes* no longer exist in most of the states, although they are not unknown in the South.

[5] New York state legislative document (1923) no. 55, *Report of the Special Joint Committee on Taxation and Retrenchment*, 1923, pp. 9–17; James, *Local Government in the United States*, especially pp. 109–119.

URBAN INCREASE, 1790–1920

It is hard to discuss the growth of cities in the United States without loading the pages up with many tables and statistical details. As we think the problem through, however, we find that there are a few outstanding questions to which we wish to have answers.

First. How has the growth of cities compared with the increase of the national population as a whole?

When the federal government was set up in 1789 the American territory extended westward to the Mississippi but did not include the Floridas at the south. Since that day the American flag has been carried westward to the Pacific Ocean and southward to the Floridas, Texas, New Mexico, and Arizona. In 1789 the great majority of the American people inhabited the thirteen states upon the coast. The west was a wilderness in which there was only a promise of future settlement in the little frontier colonies which stood in the Northwest territory and in what is now Kentucky and Tennessee, pointing like spearheads into the Indian country. To-day actual population extends from the Atlantic to the Pacific, and from the Gulf of Mexico to Canada. In 1790 less than four million whites and negroes were found to be enumerated in the entire federal domain. The fourteenth census, taken in 1920, enumerated 105,710,620 inhabitants, exclusive of the populations of Alaska and the outlying possessions. The 1920 population was almost twenty-seven times that of 1790. In 1790, in other words, there were less than four per cent as many people under the United States government as there are to-day. The past century has indeed seen the culmination of the movement inaugurated unconsciously by Columbus four hundred years ago, a movement which has established in America of European stock one of the greatest nations of all times.

But if the nation has grown, both territorially and in population, its cities have grown even more rapidly. In 1789, 131,396 people inhabited the six American cities having approximately 8,000 inhabitants or over. To-day instead of six such cities, there are 924, with a combined population of 46,307,740. While the national population has increased until it is twenty-seven-fold what it was in 1790, the urban population has become 352 times as great as it then was. Then the urban population was 3.3 per cent of a total population of less than four millions. Now on the same basis it is 43.8 per cent of a total population which exceeds one hundred millions.[6]

[6] Bureau of the census, *A Century of Population Growth*, pp. 11–15; *ibid.*, *Fourteenth Census*, I, *Population 1920*, p. 43.

The student may well question, however, why the community of 8,000 inhabitants should be taken as the smallest urban unit, and why all other places should be classed as rural. In fact, the federal census bureau has already raised this question. What we are trying to do is to distinguish between the people who live under urban and those who live under rural conditions, since clearly their local needs are different. There are really two questions involved. The first is that of the degree of congestion or concentration. How many people live on each acre of ground? The second is that of the pursuits of the people. How are they earning their living? Both tests are important. The impoverished peasantry of certain portions of India and China may overcrowd the land on which they live, creating almost insoluble economic and medical problems, yet they do not constitute an urban population or give rise to the great urban problems. They are farmers, and of the soil earthy. They provide their own food supply, whereas a truly urban population is industrial and commercial. Its food supply comes to it through the purchasing power of the other commodities and services which it produces. On the other hand, this test of vocations is not the only one to be applied. If the city laborer owns a Ford and has established his home in the country, he is working, but not living, under congested urban conditions. He is a city worker but not a city dweller.[7]

The true test of an urban community is, then, a combined one, including both the degree of congestion and the pursuits or vocations of the people. Such a test the census bureau would find it very hard to apply. As a substitute a different double test is now used. First, is the place incorporated separately as a city, borough, or village? Has it been separated for purposes of local government from the rural township or county? If so, the state itself has recognized the community as being essentially urban and it may be treated as such. Second, has it at least 2,500 population?[8] This figure has been chosen more or less arbitrarily, yet it is undoubtedly better for many purposes than

[7] As to the proper test for distinguishing between urban and rural communities, see Weber, *The Growth of Cities in the Nineteenth Century*, pp. 1–19.

[8] Bureau of the census, *Fourteenth Census*, I, *Population 1920*, p. 43. But for various reasons "towns" in the highly industrialized states of Massachusetts, New Hampshire, and Rhode Island are treated as urban if they are of the requisite population. Unless otherwise indicated, statements concerning urban population in later chapters of this volume will be based upon the census bureau figures of 1920, using its test of the incorporated place of 2,500 inhabitants as the dividing line between rural and urban communities.

8,000. On this new basis of comparison we find that in 1920 *over one-half* of the American people were classed as urban. The figures are as follows:

Urban, 54,304,603, or 51.4 per cent of total.

Rural, 51,406,017, or 48.6 per cent of total.

Even these figures will not satisfy all persons. Some will say that the unit should be smaller. In practically all of the states there are numerous incorporated places of less than 2,500 population. In the figures just given these are classed as rural, but are they rural as a matter of fact? As to some the point might well be argued. These incorporated places of less than 2,500 inhabitants are 12,905 in number, and have a total population of 8,969,241, or 8.5 per cent of the national total. Deducting this figure from the rural total given above we find that in strictly rural territory there are 42,436,776 people, which is only 40 per cent of the total population. On the other hand, the aggregate population of all incorporated cities, villages, and boroughs, ranging in size from New York down to the pettiest incorporated village, is 63,273,844, amounting to 59.9 per cent of the entire population. If this is the proper basis for calculation, the nation has here indeed some important food for thought.

Of course those who live in the largest cities are inclined to ridicule the idea of classing as "urban" the smaller incorporated places. Many of them think that even 2,500 is too small a basic unit. In this book on city government we shall, of course, be more concerned with large cities than with small. This does not mean that the latter are unimportant. Some space will be devoted to their special problems, and there will be frequent occasion to refer to them. In the main, however, we shall deal with cities having upwards of 25,000 population. It is in such places that the problems of urban life and city government arise in their most acute forms. It will be well to observe, therefore, how many of them there are and how many people now live in them. At the time of the census of 1790 only two American cities had over 25,000 population, namely, Philadelphia, with 42,444 inhabitants, and New York, with 33,131. Together they held less than two per cent of the nation's population. There are to-day in the United States 143 cities of this size (between 25,000 and 50,000 population), and 144 which have over 50,000 inhabitants each. Altogether these 287 cities contain 35.7 per cent of our national population, or 37,770,114 inhabitants. Their combined population approximates that of France, or of England and Wales together.

From whatever point we approach the facts the conclusion is always the same. From 1790 to 1920 American cities ran a population race with the rural districts. The cities began under a tremendous handicap. The Americans were at first a rural people. Their industries were small and weak and at first enjoyed little protection. On the other hand, stretching for hundreds of miles into the west were millions of acres of fertile but untilled land. The pioneer instinct played into the hands of the lure of land ownership. Men and women were constantly being drawn from the towns and factories as well as the farms of the east out upon the long and dusty wagon trails and later to the railroad lines which carried them to the cheap lands and independence of the west. The homestead law of 1862 was an additional stimulus. Immigrants, too, in earlier days came directly from Europe into the Mississippi valley. Britishers, Germans, and Scandinavians moved westward and farmward with the tide. Soon the whole land was overspread, from coast to coast. By 1880 the amount of available homestead land was rapidly growing smaller. At the same time the effects of the partial shutting off of importation during the Civil War, and of the measures, including a high tariff, which were designed to stimulate home manufactures, began to be clearly discernible. Railroad building, mining, lumbering, manufacturing, the production of oil, were given a tremendous stimulus. In the decade from 1870 to 1880, due to the large amounts of homestead lands still available, much more than half of the national population increase went to the farms. In the following decade (1880–90) this condition was almost reversed. For the first time in American history the decade 1880–90 showed a greater population increase in urban than in rural districts. In the last thirty years this trend has been maintained. The rural population increases now but slowly. In some states it has been declining for years. From 1910 to 1920, fifteen states showed a net loss in rural population.[9] Meantime the city population grows apace. In the past decade every state showed an increase in the number of city-dwellers. The total decennial increase in population (1910–20) for the country as a whole was 13,738,354. Of this increase the cities received over twelve million, the country districts less than 1,600,000.[10]

From 1790 to 1880 the total enumerated population of the United States increased by 46,226,569. Of this number more than two-thirds (over 32,000,000) went into the rural districts, and less than one-third

[9] Bureau of the census, *Fourteenth Census*, I, *Population 1920*, pp. 60–61.

[10] Bureau of the census, *Fourteenth Census*, I, *Population 1920*, p. 43.

(about 14,000,000) into the cities. These ninety years were the great era of rural growth. Since 1880 the total population has increased 55,554,837. More than two-thirds of this increase (about 40,000,000) has accrued to the cities, less than one-third (approximately 15,600,000) to the rural districts. The year 1880, then, constitutes an important turning point in American history. It divides the old America from the new, the America of the forest wilderness from the America of "the city wilderness."

THE CAUSES OF CITY GROWTH

Second. What are the causes of this great change which is so rapidly remaking America? We could almost take as our text the scriptural saying that "man doth not live by bread only" though in so doing we might be guilty of misinterpretation. Moses was trying to turn his people's thoughts away from material to spiritual things, to the word of God. The quotation is not, as we shall see, wholly inappropriate. Cities do not produce either their own food supplies or the raw materials for clothing. Therefore city life on a large scale is not possible until the rural districts produce a real surplus of foods, wool, cotton, and so forth, to feed and clothe the cities. When not many hundreds of years ago there was no large-scale scientific agriculture anywhere in the world cities could not exist upon a large scale. Almost the entire population of England, France, and other countries consisted of a laborious peasantry closely bound to the soil. In many parts of the world this condition still exists. There is no surplus. Instead the dread specter of starvation frequently stalks through the land. Where such conditions exist true civilization, which implies city-life, cannot exist. Though gloomy poets may chant "the short and simple annals of the poor" or sentimentally bemoan the desertion of the beautiful pastoral village of Auburn, the student of social progress cannot entirely regret the passing of such economic conditions.

In England the improvement of agricultural methods and the extension of cultivation over a larger area by the inclosure of common lands began some decades earlier than the development of the factory system and the utilization of steam power. The *agrarian revolution*, as it may be called, created the conditions which made easy the industrial revolution. The former increased the agricultural production of England not only in total but also per farm and per worker. There came to be a large class of farm laborers who had little or no work,

being employed for short seasons only. They drifted to the small towns and villages where they constituted a serious social menace. There they were when the *industrial revolution* began to make its demand for laborers in the factories. In the late eighteenth century as more and more farm laborers were attracted by higher wages into the crude new factory towns, the remaining farmers enjoyed a good demand for their produce, with rising prices, but at the same time found themselves compelled to invent better methods of production, since labor was at times scarce and dear. Thus further improvements in agriculture were brought about. Cities grew and flourished, and as a result farmers prospered, on the whole, more than before. Improvements in manufacturing went forward hand in hand with improvements in agriculture. The latter supplied an increasing and better food supply, with, of course, much aid from America, and thus cities were permitted to grow. The food supply was ample and secure.[11]

The greatest growth of cities came several decades later in the United States than in England. The causes have been much the same in both countries, but with significant differences. Agricultural improvements came later here than in England and they came under different conditions. Because of its tremendous arable area, the United States produced for many years not only enough food for home consumption but also an exportable surplus. As long as land was cheap or even free, and markets were good, men needed little skill or equipment to make a living at farming. There was one difficulty, however. Labor was expensive and not always available. Inventors and manufacturers turned their attention to this problem. Machinery was produced which proved a partial substitute for labor. With the invention and large-scale manufacture of farm machinery,—the reaper, the binder, the threshing machine, the gang plow, and the tractor,—agriculture entered upon a new era. More acres could be put under cultivation with the labor of fewer hands. Supplementing these advances came agricultural education, the selection of better seeds, improved utilization of the soil, the breeding of better cattle and hogs. At the same time the railroads and the Great Lakes steamship companies were developing methods of hauling tremendous food supplies for long distances, at relatively low rates. Great systems of food storage sprang up, including grain elevators, warehouses, and cold storage plants. The grain and cattle exchanges sold goods by grade or description to be

[11] Weber, *The Growth of Cities in the Nineteenth Century*, pp. 164 ff.

delivered hundreds or thousands of miles away. An increased food supply was thus secured, and it made possible the support of a still larger urban population.

At the same time the prosperity of the farmers increased fairly steadily, and as their incomes grew they demanded more and more of the goods manufactured in cities,—more farm machinery, better equipment, greater comforts in the home, more schooling for the children. Their standard of living advanced rapidly. More men were called into urban industries to produce the goods needed by the farmers as well as by the people of the cities. Unlike his English competitor the American manufacturer found his principal market at home. Thus in recent years a steadily dwindling percentage (but actually increasing number) of farmers, with a rising standard of living, contrived to consume more and more city-made goods. The automobile came, and presently every farmer who was not still a pioneer had his family car. Good roads had to follow. Books, phonographs, pianos, more clothing and furniture, better kitchen utensils, radios, began to appear in the farmer's home.

The process here mentioned still goes on, despite some setback during the period of deflation following the war. While nothing has been said of "the lure of the city," it is an important factor in drawing many young people from farm to city. Fundamentally, however, the growth of cities and the relative decline of the rural population are due to economic causes. Cities are not essentially a cause but a result of certain economic forces. If they are free to do so, men and women naturally tend to go where their services are best and most surely rewarded. The farmer himself is as much responsible for the growth of cities as anyone. On the one hand the farmer demands the goods produced in cities; on the other, he needs to have great cities relatively near at hand to furnish the markets for his own produce. The nearer to a city he is, generally speaking, the more valuable his land, the surer his market, and the smaller his marketing expense.

Third. But why is it that we do not have more small sized cities instead of a few apparently overgrown centers? This is a different question and one not easily answered. The facts are briefly that in the New York metropolitan district alone are approximately eight million people, while eleven other metropolitan centers have together nearly fifteen million inhabitants. Nearly one-fourth of the American people live crowded together in these twelve metropolitan districts. While the rate of increase from 1910 to 1920 in New York, Philadelphia,

and Chicago together, was less than that in smaller cities, due to the fact that the population of the three largest cities was spilling over their boundaries into the suburbs, the rate of increase for all metropolitan areas was considerably in excess of the rate of increase in towns of under 25,000 population. The hopes expressed some years ago of the decentralization of industry and the growth of small towns at a rate exceeding that of large cities, have not been fulfilled. Modern industry has largely passed beyond the stage of "town economy" into what has been called "metropolitan economy." [12] The great city has its "satellite cities" and its congested suburbs.[13] In financial resources, labor supply, transportation facilities, advertising value, as well as in other respects, the large center usually has advantages over smaller places. Indeed so great are as a rule the savings and opportunities in large cities through specialization, nearness to allied industries, favorable transportation and power rates, and other factors, that the merchant or manufacturer in the large city can afford to pay higher wages, rents, and taxes, and can still usually defeat his small town competitor in the struggle for business. Industries tend to group themselves in places where the raw materials and the skilled labor supply are available, as in the case of the automobile industry in the Detroit-Toledo-Cleveland district, rubber goods in Akron, ready-made clothing in New York, Chicago, and Rochester, meat packing in Chicago and Kansas City, moving-picture production in Los Angeles, and so on. The formation of great "trusts" and other combinations, or the almost complete monopolization of certain businesses by a single corporation, also tend to concentrate particular industries in a single place, with a resultant stimulus to the growth of a few great rather than many small cities. Despite higher living costs and great congestion, the working class too seems to prefer large cities to small.

THE FUTURE GROWTH OF AMERICAN CITIES

Fourth. Are cities likely to grow as rapidly in the future as in the recent past? There is no city in the country which does not have its amateur statisticians who are willing to give you gratis a prophecy as to the future growth of the city. New Yorkers talk of the future when

[12] Gras, *Introduction to Economic History*, pp. 104–340.

[13] Taylor, *Satellite Cities*, a study of Industrial Suburbs; Bureau of the census, *Fourteenth Census*, I, *Population 1920*, pp. 62–75.

their city will have twenty-five or even fifty million inhabitants.[14] In Los Angeles you are told that that city will soon be the third largest in the country. Bigness in cities as well as in other things has become an American ideal. Every city has its optimists, many of them engaged in the sale of real estate, who wish to make you believe that any investment of money made in their city cannot fail to bring great rewards, because of the future growth and prosperity of the community. How many thousands of people, ignorant of actual conditions and unmindful of the many years which must elapse and of the taxes which must be paid before profits can be realized, have not been taken in by the enthusiasm of the real estate salesman!

The student needs to be careful in matters of this kind. Prophecies as to city growth cannot safely be made without prophetic knowledge of the many factors which control it. These factors are of two kinds, those which promote city growth generally in the country as a whole, and second, those which promote the growth of any particular city instead of or even at the expense of its neighbors.

The first question is, why do cities in the United States as a whole tend to increase in population more rapidly than do the rural districts? Social and economic forces operating throughout the country and in the world at large may promote or check the growth of cities generally. A particular individual may have a choice between being a farmer or a toiler by hand or brain in the city, but it cannot be said that men in the mass are masters of their destiny. We have seen how in the past the agrarian revolution diminished the need of farm laborers in England, and how the industrial revolution drew them into the factory towns. They were almost compelled to go where they could find employment, the means of livelihood.

The same forces are at work in America to-day. The constant improvement of agricultural methods makes it possible for the farmers, without great increase in numbers, to produce more and more food to be consumed by the nation as a whole. The food supply is adequate to the needs of an even greater city population than we now have. More farmers under present conditions would probably mean overproduction of foods, lower prices, and distress among farmers every-

[14] A careful statistical study recently made points to a population of approximately 29,000,000 in the entire New York metropolitan area, including parts of New Jersey and Connecticut, by the year 2000, but less than half of this population will be in the city of New York as at present delimited. Pearl and Reed, *Predicted Growth of Population of New York and its Environs*, 1923.

where. Therefore it is economically undesirable to have more people engaged in farming than we now have unless one of three things happens.

Suppose in the first place, there were a sudden and great increase in the effective foreign demand for American farm products. American farmers would increase their production with profit; the industry would enjoy a period of prosperity; and other persons would enter the business, taking up lands not now used. There is little reason to expect this to happen in the near future. The European countries are all in serious financial difficulties which prevent them from increasing greatly their purchases of American grain, meats, and wool. Until the European situation has been greatly improved, American farmers will not experience much increase in the foreign demand for their products. Governmental efforts to stimulate this demand will have little effect as long as a high protective tariff hampers Europeans in their effort to exchange products with us.

Secondly there might occur such a rapid increase in American urban population as to make necessary more farm production than is possible with our present farm population. This could happen only as the result of a tremendous immigration from foreign parts, and it is very doubtful whether it would happen even under such a condition. In any case our present immigration laws are so restrictive as in all probability to prevent this contingency. Even if it did occur, however, it would assume the very thing we are trying to ascertain, namely, the prospect of a continued growth of cities.

Finally the increase in demand for farm products might be due not to foreign demand, nor to a rapid growth of American cities, but to an increase in the per capita demand of the American people for farm products. In other words, suppose people began to eat more food, or to wear more woolen and cotton clothing. This supposition answers itself. Undoubtedly some city-dwellers have not enough to eat and wear, but unless we assume that a great many people are now undernourished and inadequately clothed we can hardly picture the per capita consumption of foods and clothing going up to any great extent. If we "eat more wheat" or "eat more raisins," in the normal course of things we must eat less of something else. The per capita demand for food is *quantitatively* not a very elastic thing. Indeed, considering the normal mode of life in cities, an argument might be framed to prove that the national per capita demand for food may become less when more people live in cities. City-dwellers do demand *better* foods and *finer* clothing fabrics from generation to generation, almost from year

to year, and to this demand the producers of farm products must and do respond; but this does not mean that more farmers are needed, or more produce.

The standards of living of most classes of the American people tend to rise steadily. This is as true of farmers as of city-dwellers. The small independent farmer of one hundred years ago had some comforts, undoubtedly, yet nothing to compare with those possessed by his successor of to-day. The modern farmer probably has better clothing, better housing, and a more varied diet than his predecessor. He has the use of machinery and of improved tools. His wife has improved kitchen utensils and household appliances. The spinning wheel is a thing of the past. Clothing and shoes are bought ready-made, or the cloth is purchased and the dress is made on the modern sewing machine. The cream separator and other appliances lighten the day's work. The home lighting and heating systems are better than they used to be. The telephone is in the house, a graveled or paved road is not far off, and the automobile is ready for instant use. For music there is the piano or the phonograph, perhaps even the radio. An improved school is not far away, and the parents not only plan a high-school education for their children, after the grades have been passed, but hope to aid them if they desire more advanced education in college or university, in music or in art.

In various degrees this standard of living is coming to prevail among farmers all over the country. In cities also the same leaven is at work. The demand is not for more food so much as for more education, more physical comforts, more machinery, and an automobile. And the significant thing is that nearly all of the things which to-day we think we need to make life better are produced in the city rather than in the country. The farmer's machinery, his automobile, his phonograph and household appliances, his ready-made clothes and ready-packed foods are made for him in the city and shipped to him from the city. Indeed we may say that while a century ago each farmer produced on his own land and with his own labor most of the things he needed, to-day a great part of the farmer's work is done for him in the cities. This is probably the most important phase of "the division of labor" in the economic world.

Merely to maintain his present standard of living the farmer needs a large cash income. To raise the standard, as he is raising it, he will need even more money each year. In other words, farmers, like others, are driven by their own wants to produce more and to get larger money

incomes, and when they spend their increased incomes in buying more city-made goods they make business better in the cities and give the stimulus for further growth there.

The constant improvement of agricultural methods is, therefore, the fundamental condition which makes *possible* the increase of city population at a rate more rapid than that of rural population. But the improvement of agricultural methods depends very largely upon the educational and research work done at agricultural and other scientific institutions, and upon the output of new inventions and the large-scale production of labor-saving devices for farm use. In other words, the further growth of cities is one of the very conditions upon which the improvement of farming depends. When we consider also that the farmer needs an ever-increasing market for his constantly increasing crops, we can only conclude that, unless he can find a foreign market, the growth of cities is *necessary* to his economic welfare. This does not mean that there is complete identity of interests between the city and the country. Under present conditions there must always be differences of opinion concerning the prices at which farm and city products shall be exchanged, concerning the legitimate profits of middlemen and transportation companies, and concerning the adjustment of the burden of taxation as between rural and urban districts. It is very clear, however, that under present conditions cities will continue to grow more rapidly than the rural population.

Other forces tend to work in the same direction. For various reasons immigrants from European countries have in recent years tended to remain in the larger cities, sometimes without knowledge of their true economic interests. The attractions of city life, irrespective of economic advantages, seem to hold a number of demobilized soldiers and young people who have come to the city for education, for pleasure, and for various business purposes. Despite all that is done to improve rural social and educational opportunities, it has not been possible to prevent the "drift" of young people to the cities. A number of "retired farmers" will also be found in the population of every city. There is, of course, some "back to the farm" movement, from city to country, yet it does not equal the flow in the other direction. Then, too, it must be remembered, that to-day health conditions in most cities are so good that there is usually a considerable excess of births over deaths. The greater number of those who are born in cities and brought up in the ways thereof, remain in cities throughout their lives.

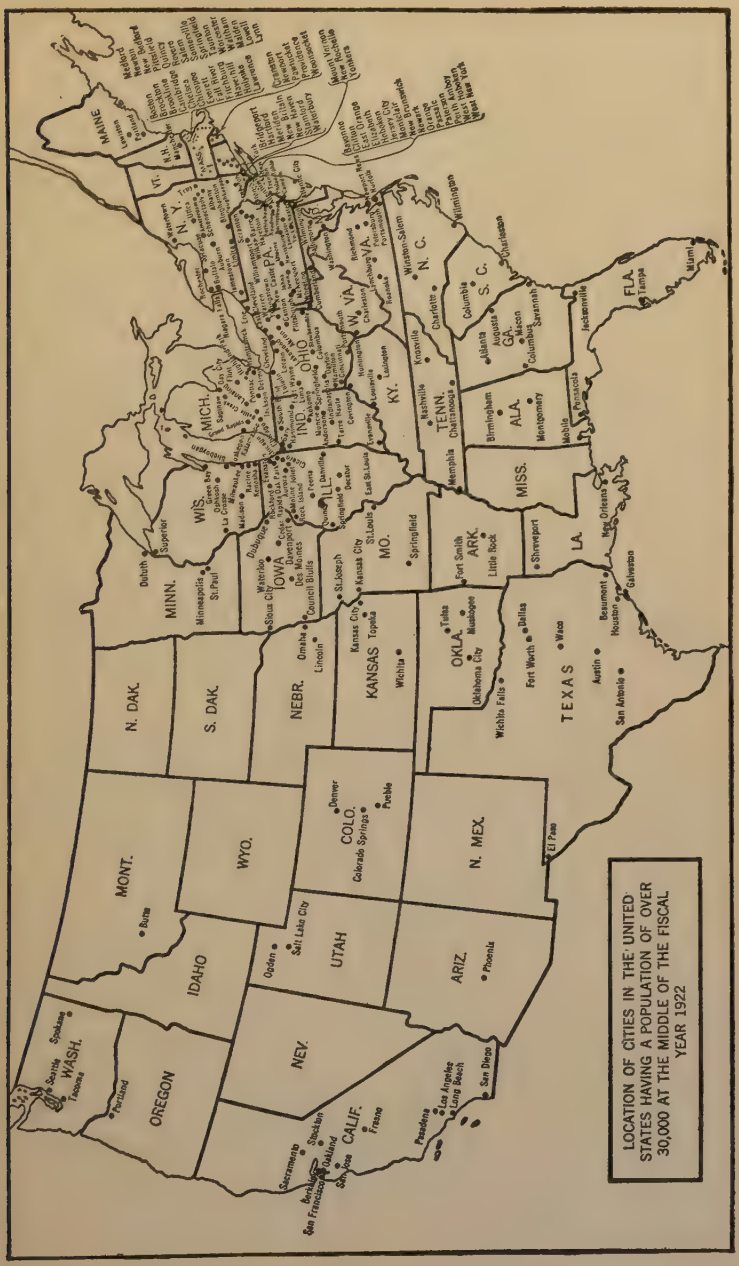
At the present time, and given a continuation of modern social

forces, it is impossible to do other than to predict the continued rapid growth of city population in the United States. The 1920 federal census showed over fifty per cent of the American people living in incorporated places having over 2,500 population each. The 1930 census will probably reveal to us a nation over fifty-five per cent of whose people dwell in such cities. There is little prospect, however, that urban population will ever predominate in numbers over rural population as it does to-day in England or in Belgium. Because of a limited area of good agricultural land, England has not attempted to raise all her own foodstuffs for many years. In the United States there is so much fertile land that we shall probably always have an agricultural population adequate to supply nearly all of our own food requirements.

It is not to be supposed, however, that all cities in the United States have equal prospects of future growth. The conditions which control the prosperity of particular centers of population are so various and complicated as to make futile all off-hand predictions. We do not have to go back into ancient history for illustrations of the rule that cities decline as well as grow. All America has grown so rapidly in the past century and a half that the cities are few which have not profited in some manner from the general increase. Yet why did Boston grow so much more rapidly than Salem? What has caused Cleveland to overtake and outstrip her rival, Cincinnati? Because Los Angeles grew so much more rapidly than San Francisco between 1910 and 1920, are we justified in predicting the permanent eclipse of the latter? We can readily understand why mining and lumbering towns should sometimes decline and even disappear, but the other problems here suggested are highly complicated. To solve them we may have to delve into problems of geography, social and economic history, natural resources, transportation and transportation rates, banking and finance, labor conditions, climate, health, housing, and even politics. Above all, perhaps, we should not neglect the character of the people themselves and their efforts to build their city and to advertise its advantages. There may be some yet-undiscovered law of the growth and decay of cities, but it is impossible to believe that the dwellers within a city have not some control over its fate.

THE LOCATION OF CITIES IN THE UNITED STATES

Fifth. Location is one of the important factors determining the growth of cities. A mere glance at the accompanying map of the


LOCATION OF CITIES IN THE UNITED STATES HAVING A POPULATION OF OVER 30,000 AT THE MIDDLE OF THE FISCAL YEAR 1922
MAINE
VT.
N. H.
MASS.
R. I.
CONN.
N. Y.
PA.
N. J.
DEL.
MD.
W. VA.
VA.
N. C.
S. C.
GA.
FLA.
OHIO
IND.
ILL.
MICH.
WIS.
MINN.
IOWA
MO.
KY.
TENN.
ALA.
MISS.
LA.
ARK.
OKLA.
TEXAS
KANSAS
NEBR.
S. DAK.
N. DAK.
COLO.
WYO.
MONT.
IDAHO
UTAH
ARIZ.
N. MEX.
NEV.
OREGON
CALIF.
WASH.
Portland
Seattle
Tacoma
Spokane
Boise
Butte
Ogden
Salt Lake City
Denver
Colorado Springs
Pueblo
El Paso
Phoenix
Albuquerque
Santa Fe
Reno
Carson City
Sacramento
San Francisco
Oakland
San Jose
Stockton
Fresno
Pasadena
Los Angeles
Long Beach
San Diego
Oklahoma City
Tulsa
Muskogee
Wichita Falls
Fort Worth
Dallas
Waco
Austin
San Antonio
Houston
Galveston
Beaumont
Port Arthur
Shreveport
Fort Smith
Little Rock
Kansas City
Topeka
Wichita
Omaha
Lincoln
Council Bluffs
Des Moines
Davenport
Rock Island
Waterloo
Sioux City
Dubuque
Duluth
Superior
Minneapolis
St. Paul
Madison
La Crosse
Milwaukee
Racine
Kenosha
Oshkosh
Green Bay
Chicago
Rockford
Aurora
Joliet
Peoria
Springfield
St. Joseph
St. Louis
East St. Louis
Cairo
Quincy
Evansville
Terre Haute
Indianapolis
Muncie
Anderson
Kokomo
Fort Wayne
South Bend
Gary
Hammond
Michigan City
Grand Rapids
Kalamazoo
Battle Creek
Saginaw
Bay City
Flint
Detroit
Toledo
Lima
Springfield
Dayton
Hamilton
Middletown
Cincinnati
Columbus
Zanesville
Newark
Mansfield
Akron
Canton
Youngstown
Warren
Cleveland
Lorain
Sandusky
Erie
Buffalo
Niagara Falls
Rochester
Syracuse
Utica
Schenectady
Troy
Albany
Binghamton
Elmira
Jamestown
Scranton
Wilkes-Barre
Hazleton
Reading
Harrisburg
Altoona
Johnstown
Pittsburgh
Wheeling
Parkersburg
Huntington
Charleston
Clarksburg
Fairmont
Morgantown
Richmond
Petersburg
Norfolk
Portsmouth
Newport News
Hampton
Roanoke
Lynchburg
Danville
Winston-Salem
Greensboro
High Point
Asheville
Charlotte
Durham
Raleigh
Wilmington
Knoxville
Chattanooga
Nashville
Memphis
Columbia
Greenville
Spartanburg
Augusta
Atlanta
Macon
Columbus
Savannah
Birmingham
Montgomery
Mobile
Jacksonville
Tampa
Miami
New Orleans
Lake Charles
Alexandria
Shreveport
Monroe
Meridian
Vicksburg
Jackson
Hattiesburg
Laurel
Gulfport
Biloxi
Pascagoula
Meridian
Tuscaloosa
Gadsden
Anniston
Birmingham
Selma
Montgomery
Mobile
Pensacola
Tallahassee
Jacksonville
Daytona Beach
Orlando
St. Petersburg
Tampa
Miami
Key West
Bangor
Portland
Lewiston
Auburn
Biddeford
Saco
Old Orchard
Kittery
Portsmouth
Dover
Rochester
Manchester
Nashua
Concord
Keene
Claremont
Berlin
Laconia
Franklin
Lebanon
Hanover
Rutland
Burlington
Barre
Montpelier
Bellows Falls
Brattleboro
Springfield
Bennington
Pittsfield
North Adams
Adams
Greenfield
Holyoke
Chicopee
Springfield
Westfield
Northampton
Amherst
Easthampton
Palmer
Ware
Worcester
Fitchburg
Leominster
Gardner
Clinton
Marlborough
Framingham
Natick
Waltham
Newton
Boston
Brookline
Cambridge
Somerville
Chelsea
Everett
Quincy
Weymouth
Braintree
Brockton
Taunton
Fall River
New Bedford
Attleboro
North Attleboro
Pawtucket
Central Falls
Woonsocket
Providence
Cranston
Newport
Warwick
Pawtucket
Bridgeport
Hartford
New Britain
Waterbury
New Haven
Meriden
Wallingford
Norwich
Willimantic
New London
Stamford
Norwalk
Danbury
Bristol
Middletown
Rockville
Manchester
Hartford
Meriden
Waterbury
New Haven
West Haven
Milford
Ansonia
Derby
Shelton
Stratford
Bridgeport
Norwalk
Stamford
Greenwich
Mount Vernon
New Rochelle
Yonkers
New York
Long Island City
Brooklyn
Queens
Staten Island
Jersey City
Hoboken
Bayonne
Elizabeth
Newark
Orange
East Orange
Passaic
Paterson
Perth Amboy
Trenton
Camden
Atlantic City
Vineland
Millville
Bridgeton
Salem
Wilmington
Dover
Baltimore
Cumberland
Hagerstown
Frederick
Washington
Alexandria
Arlington
Falls Church
Fairfax
Manassas
Leesburg
Winchester
Front Royal
Harrisonburg
Staunton
Lynchburg
Roanoke
Bluefield
Charleston
Huntington
Parkersburg
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Huntington
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Covington
Newport
Louisville
Owensboro
Paducah
Hopkinsville
Bowling Green
Henderson
Evansville
Terre Haute
Indianapolis
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Kokomo
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South Bend
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Michigan City
Grand Rapids
Kalamazoo
Battle Creek
Saginaw
Bay City
Flint
Detroit
Pontiac
Port Huron
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Ypsilanti
Lansing
Muskegon
Holland
Grand Rapids
Kalamazoo
Battle Creek
Benton Harbor
St. Joseph
Niles
Michigan City
Gary
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Chicago
Waukegan
Evanston
Oak Park
Cicero
Berwyn
Aurora
Elgin
Joliet
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Freeport
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Davenport
Rock Island
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Galesburg
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Alton
East St. Louis
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Hannibal
Kansas City
St. Joseph
Leavenworth
Atchison
Topeka
Wichita
Hutchinson
Salina
Manhattan
Abilene
Junction City
Fort Riley
Lawrence
Kansas City
Independence
Sedalia
Jefferson City
Columbia
Springfield
Joplin
Carthage
Webb City
Cape Girardeau
Sikeston
St. Louis
East St. Louis
Alton
Belleville
Centralia
Mount Vernon
Carbondale
Cairo
Paducah
Hopkinsville
Clarksville
Nashville
Murfreesboro
Tullahoma
Shelbyville
Columbia
Franklin
Gallatin
Springfield
Jackson
Memphis
Greenville
Vicksburg
Natchez
Meridian
Hattiesburg
Laurel
Gulfport
Biloxi
Pascagoula
Mobile
Pensacola
Tallahassee
Jacksonville
Daytona Beach
Orlando
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Tampa
Miami
Key West
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Auburn
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Saco
Old Orchard
Kittery
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Rochester
Manchester
Nashua
Concord
Keene
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Montpelier
Bellows Falls
Brattleboro
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Bennington
Pittsfield
North Adams
Adams
Greenfield
Holyoke
Chicopee
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Westfield
Northampton
Amherst
Easthampton
Palmer
Ware
Worcester
Fitchburg
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Gardner
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Marlborough
Framingham
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Taunton
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Attleboro
North Attleboro
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West Haven
Milford
Ansonia
Derby
Shelton
Stratford
Bridgeport
Norwalk
Stamford
Greenwich
Mount Vernon
New Rochelle
Yonkers
New York
Long Island City
Brooklyn
Queens
Staten Island
Jersey City
Hoboken
Bayonne
Elizabeth
Newark
Orange
East Orange
Passaic
Paterson
Perth Amboy
Trenton
Camden
Atlantic City
Vineland
Millville
Bridgeton
Salem
Wilmington
Dover
Baltimore
Cumberland
Hagerstown
Frederick
Washington
Alexandria
Arlington
Falls Church
Fairfax
Manassas
Leesburg
Winchester
Front Royal
Harrisonburg
Staunton
Lynchburg
Roanoke
Bluefield
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Huntington
Parkersburg
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Terre Haute
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Muncie
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Kokomo
Fort Wayne
South Bend
Gary
Hammond
Michigan City
Grand Rapids
Kalamazoo
Battle Creek
Saginaw
Bay City
Flint
Detroit
Pontiac
Port Huron
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Ann Arbor
Ypsilanti
Lansing
Muskegon
Holland
Grand Rapids
Kalamazoo
Battle Creek
Benton Harbor
St. Joseph
Niles
Michigan City
Gary
Hammond
Chicago
Waukegan
Evanston
Oak Park
Cicero
Berwyn
Aurora
Elgin
Joliet
Rockford
Freeport
Dubuque
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Davenport
Rock Island
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Galesburg
Quincy
Alton
East St. Louis
Belleville
Centralia
Decatur
Springfield
Bloomington
Peoria
Pekin
Rock Island
Moline
Galesburg
Quincy
Hannibal
Kansas City
St. Joseph
Leavenworth
Atchison
Topeka
Wichita
Hutchinson
Salina
Manhattan
Abilene
Junction City
Fort Riley
Lawrence
Kansas City
Independence
Sedalia
Jefferson City
Columbia
Springfield
Joplin
Carthage
Webb City
Cape Girardeau
Sikeston
St. Louis
East St. Louis
Alton
Belleville
Centralia
Mount Vernon
Carbondale
Cairo
Paducah
Hopkinsville
Clarksville
Nashville
Murfreesboro
Tullahoma
Shelbyville
Columbia
Franklin
Gallatin
Springfield
Jackson
Memphis
Greenville
Vicksburg
Natchez

United States showing the locations of cities having over 30,000 population in 1922 reveals some important points.[15]

The first fact that appears is the concentration of urban population in what may be called the northeastern section of the country, east of the Mississippi, north of the Ohio, and southeast as far as Maryland, Delaware, and the District of Columbia. The northeastern section as here defined contains one-seventh of the area and over half of the population of the entire continental United States. In it are located 41 cities of over 100,000 population and 146 of from 25,000 to 100,000, with a total population in all such places of over 27,000,000. This is 73 per cent of the entire population in cities of this size throughout the country. In the remaining six-sevenths of the country there are only one hundred cities of over 25,000 inhabitants each. The 187 cities in the northeastern section average nearly 150,000 population each; the one hundred in the rest of the country have an average size of 100,000.

Certain states, it will be observed, have no cities of over 25,000 inhabitants. Certain others have one or more cities of from 25,000 to 100,000 but none of a larger size. The south, the southwest, and the northwest are predominantly agricultural sections, and while they contain some large population centers such as the Twin Cities, St. Louis, the two Kansas Cities, New Orleans, Atlanta, and Louisville, [several of which are just outside of the northeastern section] these communities do not suffice to give an urban character to the areas which they serve. In the mountain states there are a few populous centers, notably Denver and Salt Lake City, but it is on the Pacific slope that we find the greatest urban concentration outside of the northeastern section. Over three-fifths of the population of the three coast states is classed as urban. The greater number of these urban people are to be found in eighteen cities of over 25,000 population each.

The greatest single factor in determining the location of cities in the United States has been the movement of population from east to west. Since the east was the first to be settled, it became the first seat of an urban population. The Atlantic coast provided the first great break in the journey of the European immigrants on their way to homes in America. Every harbor upon the coast became the commercial depot of a dependent area which spread fanlike into the hinterland, south, west, and north. Commercial cities grow up where there is a *break in transportation*.[16] Thus it happens that most of the great cities of

[15] See p. 35.

[16] Weber, *The Growth of Cities in the Nineteenth Century*, pp. 172–75.

America are located upon navigable waters, either oceans, lakes, or rivers. The size to which they will grow depends upon a hundred other influences: the time of settlement, the extent of the agricultural, commercial, and industrial opportunities in the hinterland, the nearness of rival cities, the character and enterprise of the people, the capacity of the harbor, the ease with which railroads, canals, and highways, can be built into the interior, and many others. In the south the growth of cities was undoubtedly long retarded by the Civil War, the distress of the reconstruction era, and certain peculiarities in the economic system.

Other factors influencing the location and growth of cities are nearness to natural resources, such as timber, iron, coal, oil, and the precious metals. Water-power has also had some influence. Educational institutions sometimes furnish the nucleus for the growth of a city. Political considerations such as the location of a capital or county seat are often influential. A railroad junction, though arbitrarily located, may become a new center of population. But it is hard, and the student should be careful, to distinguish between the factors which influenced the original location of the town, and those which caused its subsequent growth. Only a careful investigation of the history of each community would bring out all the important facts.

REFERENCES

The Growth of Cities in the Nineteenth Century, by A. F. Weber, New York, 1899, is the outstanding work upon its subject. It deals with England, Germany, France, Australia, and other countries, as well as with the United States. Attention is given to both the causes and the effects of city-growth. The student should also consult the census bureau's study entitled *A Century of Population Growth* (1790–1900), published in 1909, and the *Fourteenth Census of the United States*, volume on *Population 1920*, published in 1921. A convenient work for reference is the annual *Statistical Abstract*, also published by the census bureau.

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CHAPTER III

THE CITY AND THE STATE

I. Legislative Control

CITY-STATES AND NATIONAL STATES

In different places and at different times in history there have been cities which were states of themselves. Such was the condition of Athens and of other Greek "city-states" in the days before Greece was unified by military force. Rome, and later Florence, Genoa and other Italian cities also occupied this position for a time, as did Hamburg, Lübeck and other cities near the North Sea and the Baltic. There are those who assert that even London before the Norman Conquest was practically a state unto itself.[1] A city-state's area was not always restricted to the purely urban district. It usually comprised a considerable dependent rural territory, in which there might even be villages and small towns. Political control was vested, however, in the city proper. The functions of the government were not limited to the simple local police, sanitation, and education required by an earlier day. Foreign affairs, defense, the monetary system, and the regulation of commerce were equally within the scope of their activities. Such cities did not have charters conferred upon them from above, but constitutions of their own making. They were not the subordinate creatures of a greater state, but themselves sovereign and independent states.[2]

But any city standing alone, even if it is the greatest city in the world, cannot long sustain itself in war against great military forces, nor is it large enough to satisfy the desire for power of the world's greatest political leaders. Rome itself became in time only the capital city first of a great empire and later of a great church. Other cities in

[1] Sir George Laurence Gomme, *The Governance of London*, Chs. VI–VIII.

[2] Goodnow, *Municipal Government*, pp. 45–62; Munro, *Municipal Government and Administration*, I, Chs. I–III, *passim*.

the Roman empire became mere municipalities of different grades, subordinate units for local administration. In the feudal system which overspread Europe in later years some "communes" or cities managed to establish and to retain for many years a partial independence. They succeeded in carrying forward through the dark centuries the twin banners of democracy and local self-government, but were unable to reëstablish in fact the ideal of the free city. They succumbed finally to the same force which was slowly undermining feudalism itself, namely, the growing spirit of nationalism.

Spain, France, and England, in western Europe, emerged from the ruins of the feudal system as the most successful early examples of the new political unit, the modern national state. Such a state exercises authority over a considerable people and a fairly extensive area. It comprises both a large rural population and a considerable number of cities, both large and small. The cities do not rule the country, however, for legally the sovereign power is in the nation as a whole or in the monarch. Legally, too, cities and all other local units are merely subordinate local divisions of the state. They are given only such powers and functions as are deemed to be for the general welfare of the nation as a whole.

This position of subordination is the typical status of cities throughout the world to-day. Here and there will be found a community which still calls itself a "free city," but in most cases the term is only faintly reminiscent of a supposed glory which, if it ever existed, has long since passed away. The typical sovereign state to-day is the national state, or its overgrown brother, the imperial state. In such a state the city is a mere subordinate.

The United States is one of the world's national states. We have, however, a federal system of government, which means that the powers of government are divided by the constitution between the central or national government on the one side and the forty-eight state or commonwealth governments on the other. In England or France the cities stand directly under the central government. In those countries it is possible to have a single harmonious system of municipal government throughout the land. All that is needed is for the central parliament to enact, and the central executive to enforce an adequate municipal code. Due to the division of powers in the United States this is not possible with us. Here it is the states, each acting separately and in its own sovereign capacity, which control in the main the destinies of our municipal governments.

THE CITY AND THE STATE HISTORICALLY IN THE UNITED STATES

We have said that in the United States it is the states or commonwealths which have direct control over municipal government. To-day these states are forty-eight in number. They vary in size from Rhode Island which has a land area of slightly over 1,000 square miles to Texas with an area nearly two hundred and fifty times as large. In population the states range from Nevada with 77,407 people to New York with over ten millions, seventeen of the states having less than a million population each. Over 97 per cent of the people of Rhode Island, 94 per cent of those of Massachusetts and 82 per cent of those of New York are city-dwellers. On the other hand, eight states have less than 20 per cent of their population classed as urban, North Dakota and Mississippi being almost entirely rural. In a few states there are great metropolitan communities, notably New York, Chicago, and Philadelphia. The largest city in Nevada is Reno (12,016); in North Dakota is Fargo (21,961), in South Dakota is Sioux Falls (25,202), and in Mississippi is Meridian City (23,399). Nevada has only the one city of over 5,000 population. North Dakota has only six incorporated cities of over 5,000 population each; Arizona and South Dakota have eight each, and Montana has twelve. At the other extreme stand Pennsylvania with 170 cities and boroughs of over 5,000, and Ohio, Illinois, and New York with respectively 94, 91, and 90 cities and villages of this size.

It is quite unnecessary to remember all of these facts. They are important simply because they serve to show how unlike are the conditions relative to municipal government to be found in the several states. When we realize how different the problem of municipal government in New York state is from that in Rhode Island or in Texas or Nevada we shall tend to be less sweeping and positive in our generalizations. We need always to remember the oft-quoted caution uttered by Thomas Madox two centuries ago that "whoso desireth to discourse in a proper manner concerning corporated towns and communities, must take in a great variety of matter, and should be allowed a great deal of time and preparation. The subject is extensive and difficult."[3] Just as cities differ greatly among themselves, so also do the states. The latter differ in area, in composition, numbers, and density of population, in economic conditions, in history and traditions, and

[3] Preface to *Firma Burgi*.

in political leanings. Working under different conditions they attempt to solve different problems. There are a few states in which a half or more of the population is congested in one great metropolitan center. There are others which have no great cities at all but only those of small size. The state of Rhode Island must have an intense interest in the proper policing of the city of Providence, while to the people of Montana as a whole the local enforcement of law in Butte or Helena may be a matter of indifference. It will be impossible to make note of all the differences between state and state as we go along, yet we can at least keep in mind the fact that no inclusive generalizations are possible. There are exceptions to almost every rule, some of which will be referred to in footnotes.

In England from Norman times until long after the American colonies became independent states, the king granted practically all city or borough charters. This was not a function of parliament. The custom of royal grants was somewhat modified in the American colonies. Here the king did not grant charters in person, but only through the governors whom he chose to represent him and to protect his interests on this side of the Atlantic. Such governors existed only in the so-called "royal colonies" and, with some differences, in the "proprietary colonies." The "charter colonies," Connecticut, Rhode Island, and for many years Massachusetts, had a different status and a different form of government. They were more free. They chose their own governors. They governed themselves through the legislative assemblies. These bodies appear to have been very jealous of their own powers, and also to have desired to maintain a uniform system of government for their towns. At no time during the colonial period were any borough charters granted in Connecticut, Rhode Island, or Massachusetts. Boston, for example, received no city charter until 1822.

A word should be said about the charters which were granted in the other colonies. The governors who granted them had no power of themselves to change the laws either of the colony or of England. Consequently the powers granted in the charters were necessarily of a limited and essentially "private" nature. Perhaps they are best described by the term "privileges." They consisted of property rights, and the control of certain public institutions like churches, markets, bridges, and wharves. The power usually granted to enact by-laws was limited, of course, by the general principle that ordinances or by-laws may not contravene the general laws or the com-

mon law. The right to have a local court was also given in the charters, in accordance with the general rule of English law at that time that justice emanates from the king. It is important to note, however, that in many cases when the cities or boroughs wanted an extension of their powers they had to apply to the colonial assembly. Indeed some of the charters themselves were "confirmed" by the colonial assembly as laws. Thus even before the Revolution the legislative branch of the government began to assume some control over the government of incorporated municipalities.

The long struggle of the American colonies for a greater measure of self-government was directed primarily against the king and the governors appointed by him, although in the end parliament also was opposed. It was, in other words, essentially a contest between the popularly elected legislative assemblies, representing the theory of local self-government, and the irresponsible executive supporting the doctrine that the colonies were under the king and inseparable from the kingdom. When war finally came the royal governors were quickly driven from the colonies and a system of government was established in the different states in which the legislatures, themselves revolutionary bodies, assumed almost complete control of public affairs. The executive and judicial branches were for the time being subordinate to the legislature. In the stress of war people had little time to consider the problem of the proper organization of their governments. Their confidence in the legislature was, naturally, very great, and this for the reason that the legislative branch had usually been chosen by the voters, in whole or in part, and had always taken the side of the people in resisting the alleged encroachments of the governors, the king, and parliament. Some of the legislatures actually drew up and adopted the first state constitutions;[4] and claiming to possess the entire power of government as the direct successors of the British crown and parliament, they laid few restraints upon their own authority.

Few of the first state constitutions made any guarantee of local self-government either to cities or to other local units. The legislatures simply assumed without question the power to make and to amend city charters. This seemed a natural thing to do, yet it brought about a most important change in the constitution of local government. In the colonial period incorporated cities and boroughs had looked mainly to the governor as the source of their charters and the defender of

[4] Holcombe, *State Government in the United States*, pp. 40–41; Dodd, *Revision and Amendment of State Constitutions*, Ch. I.

their privileges. They existed to some extent independently of and apart from the legislative assembly. By the change which came with the revolution, they were brought completely and directly under the legislature. Thus the first step was taken which was ultimately to weld them firmly into the governmental fabric of the states. They were about to become, in essence, local agencies of the state through which it could carry out its will.

The courts early recognized the almost complete authority of the state legislatures to control municipal government. The legislatures found themselves, in the period 1776–89, possessed of an almost unlimited control over practically all subjects of legislation; and at first neither the governors nor the courts had any effectual veto upon their acts. Unfortunately, American legislators were not accustomed to so much independence. In colonial days they had been under the check of governor, king, courts, and parliament. In complete control of state and local governments, the legislatures were entirely out of character. It is not surprising that they did not know how to exercise their new authority. Abuses sprang up and flourished; much special legislation was enacted, some of which amounted to the conferment of unmerited private favors; corruption was not unknown.

Special legislation for cities, of which we have heard so much criticism in recent years, was thus possible from the beginning of the state constitutional period. For our purposes a special or local law may be defined as one which regulates the affairs of a particular city which it names. Since cities were then relatively small and their functions not extensive, the first forty years after the revolution saw only a slight development in this sort of legislative control. Such large cities as New York and Philadelphia, however, probably felt the heavy hand of the legislature from the first and as time went on the extent of this species of control increased. The laws enacted by the state legislatures regulated local elections, taxation, the establishment of improvements, the form of the city government, and even procedure in particular offices or departments. The legislatures began also to grant to favored companies or persons special local privileges or franchises for supplying cities with water, or gas (after about 1820), or horse car systems (after about 1850). Back of the bills nearly always stood certain special interests. A party defeated in the local elections asked the legislature to change the system of elections or to reduce the powers of the newly elected officers. A group of real estate owners wanted a bridge or other improvement put in a favorable location, a clique of

contractors desired an increase in public works or a changed method of letting contracts, or a new company wanted a gas or tramway franchise. It was interest-groups such as these, working through local representatives or an organized lobby, that succeeded in getting their bills enacted into local laws. Even reformers did not hesitate to apply to the legislature to correct what they considered to be local evils, but the voice of the city as a whole was seldom heard. Indeed in many cases the citizens did not even have notice of what was being done until it was too late.

With the extension of the suffrage to practically all white men in the first half of the nineteenth century the character of state legislators did not improve. The spoils system and party spirit became imbedded in state politics, while cities were growing in size and importance. A splendid field for legislative exploitation thus opened up which the members were not inclined to neglect. Some of the special laws enacted for cities were particularly vicious in the way they sacrificed the public interest for private advantage. Legislative meddling with municipal affairs probably reached its highest point in the older states between about 1850 and 1880, and in the newer states at a little later period, and it flourishes still in many places despite all attempts to suppress it.

Abuse of power almost always produces a reaction. The legislatures of the colonies before 1776 stood high in public esteem because they had fought a good fight for the cause of popular liberty. The state legislatures thus began with a good tradition behind them. They failed to live up to it, however, and it was not long before they began to lose the confidence of the people. Suspicion soon took the place of confidence. Soon the voters undertook, by constitutional amendment, to restrict legislatures to a session once in two years and to limit the length of each session. Furthermore, the governor was almost everywhere made elective by the voters, and given the power to veto legislative acts. The courts, also, began to exercise more freely the power to restrain legislation. On top of all, provisions were put into state constitutions definitely forbidding certain types of laws, such as those authorizing lotteries or granting divorces. The century since the last war with Great Britain has seen a remarkable increase in the number, the scope, and the variety of such provisions in state constitutions. Hardly any constitution is free from them.

The exponents of local self-government for cities have tried in at least four different ways by constitutional provision to restrain state

legislatures from an undue interference in municipal government. All of these methods are still in use in different states.

(1) The first effort in this direction took the form of prohibiting the legislature from doing certain specific things, or of granting the local communities the power to do the things themselves. These provisions began to appear in state constitutions as early as 1812, and have been written in from time to time ever since. Under such clauses cities in different states have been given the right to select their own officers and to have control of certain local affairs such as improving streets and granting local franchises.

(2) A second method of restricting legislative action is that of *prohibiting special legislation* relating to municipal affairs. It appeared very early that the attempt to prevent legislative meddling with local affairs by picking off one abuse at a time by special constitutional amendment would be vain, inasmuch as such amendments usually came too late to prevent the mischief. At the same time it appeared that the evil was not in legislative control over cities as such, but in the exercise of the power of special legislation. The thing to do was, then, to prohibit special legislation by constitutional amendment. This method had already been foreshadowed in earlier constitutions when Ohio and Indiana in 1851 made a direct move to forbid special laws for cities. The Ohio provision read that "the general assembly shall pass no special act conferring corporate powers." Iowa in 1857 made an even more sweeping prohibition. The movement thus begun has subsequently spread throughout the states. The subject is so important as to deserve more extended discussion at a later time.

(3) The English method of eliminating the abuses of special legislation is not to forbid all special laws but to regulate the passage of such acts with a view to protecting the public. Being legally unrestrained, parliament put certain restraints upon itself. No local or "private" measure may pass the British parliament without notice to the locality and persons interested, and there must also be a careful investigation of the facts and an impartial public hearing upon each such measure. By this procedure the worst evils of special legislation are avoided and the good features are retained. The legislature of Massachusetts began long before the Civil War to develop similar rules of procedure. In the decade 1870–80 Pennsylvania, Arkansas, Missouri, New Jersey, Texas, and Georgia, all inserted provisions into their constitutions requiring notice to be given of proposed special laws; and to-day four other states have similar provisions. Unfortunately the movement

thus begun for a better procedure has not borne much fruit. While little has yet been done to study the operation of these provisions it is evident that, except perhaps in Massachusetts, these constitutional requirements have everywhere accomplished much less than was expected of them.

(4) The constitutional convention of Missouri in 1875 was confronted with the problem of the relationship between the state and its principal city, St. Louis. What it devised was the scheme which has since come to be called *constitutional municipal home rule*. The essence of this plan is that the city shall be permitted to draft, adopt, and subsequently amend its local charter subject to the general laws of the state. The power of special legislation for the municipal needs of a particular community is simply transferred by the constitution to the community itself. This plan, which is now embodied in the constitutions of fourteen states, has great merits, which will be discussed later.

We have now covered briefly the four principal types of state constitutional provisions designed by their framers to decrease undesirable legislative control of municipal affairs and to increase the self-governing powers of cities. It will be noted that while beginnings in this direction had been made earlier, the most interesting experiments of all began to be made in the decade 1870–80. In that period were adopted in different states the provisions requiring notice of special bills, the first two municipal home rule provisions—in Missouri and California,—and a number of drastic prohibitions of special and local legislation. This was, indeed, a period of fruitful experimentation.

It was during the same period that the Michigan supreme court, under the leadership of Judge Cooley, handed down its well-known decision in which it asserted that "local government is [a] matter of absolute right; and the state cannot take it away." [5] This sweeping assertion, though not needed for the decision of the particular case, came from an able court and was fortified by a great deal of legal and historical learning. It was practically equivalent to saying that municipalities have an *inherent right of local self-government*. The courts in several other states took up the idea in an evident attempt to establish a measure of municipal home rule without waiting for an amendment to the constitution. The courts of Indiana, Kentucky, Texas, Iowa, and Nebraska have all been more or less influenced by the idea, and other courts have occasionally made assertions which seem to support the same view. On the whole, however, this general move-

[5] People *ex rel.* Le Roy *v.* Hurlbut (1871), 24 Mich. 44, 9 Am. Rep. 103.

ment has had little permanent success except in Indiana. Other states have quite generally given up the idea that the local communities have inherently the power of self-government. The supreme courts of the United States and of the leading states have rejected the idea entirely. "Local self-government is undoubtedly desirable," says the federal supreme court, "where there are not forcible reasons against its exercise. But it is not required by any inexorable principle." [6] The doctrine of legislative supremacy has almost everywhere reasserted itself.[7]

The past thirty years have witnessed a slow but appreciable decline in special legislation for cities in the great majority of the states, though it has by no means been wiped out. Contemporaneously the municipal home rule idea has spread until it has been embodied in some form in fourteen state constitutions and is being seriously considered in a number of other states. In certain states where true municipal home rule is not yet legally possible, various forms of general municipal laws and optional charter laws have been devised to bring about a clearer approach to uniformity and certainty, and a measure of local freedom in the conduct of municipal government. We have now to consider the extent and the nature of state control over cities in groups of typical states.

LEGISLATIVE CONTROL OVER CITIES GENERALLY

Prior to about 1870 the state constitutions contained relatively few restrictions upon the powers of legislatures over cities, although such restrictions had begun to make their appearance. That is to say, for nearly a century after the Declaration of Independence, cities could point to very few constitutional provisions which guaranteed them any important sphere of local self-government. This condition exists even to this day in the New England states and a few others, where the régime of legislative control through special legislation still obtains.

In such conditions what is the legal position of cities? The answer of the courts is very clear. Whether there shall be cities or not is for the legislature alone to decide. Furthermore, the legislature may not delegate this power of decision to any one else, although in most states it is considered proper for the legislators to permit a local vote

[6] Metropolitan Railroad *v.* District of Columbia (1889), 132 U. S. 1.

[7] McBain, "The Doctrine of an Inherent Right of Local Self-Government," 16 *Columbia Law Review*, pp. 190, 299, March, April, 1916.

on the question of incorporation. The boundaries of cities, their powers, and the forms of their government may be established and changed by the legislature.

If there are no constitutional provisions to the contrary, legislative power to control cities is well-nigh unlimited. "Municipal corporations" says a distinguished authority quoted by the United States Supreme Court, "owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations of the state, and the corporations could not prevent it. We know of no limitation on this right so far as the corporations themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature." [8]

Whence came this sweeping power of state legislatures over local institutions? It seems to have come by succession from the British crown and parliament to the states. By right of successful revolution, finally sanctioned by treaty, the original states claimed each within its own area, the unlimited legislative power formerly claimed by parliament itself, and this power was vested in the state legislatures as representative of the people in all legislative matters. There were no other official bodies in existence who could claim the power. Later when the federal constitution was adopted the powers thus already claimed were still for the most part left to the states, and a few years later were definitely confirmed to them by the last of the first ten amendments to the constitution of the United States. The courts, both state and federal, assisted in keeping the power in the hands of state legislatures by asserting the rule that powers not specifically given to the governor or some other officer belonged to the legislative body of the state. The incorporation of cities and the regulation of their affairs, it has been held, is a legislative function. Furthermore, what the legislature may do it may also, in most cases, undo. It may pass a law this year and repeal it next. Thus it may incorporate a city, and the local voters may act under the charter by organizing,

[8] United States Supreme Court in Atkin *v.* Kansas (1903), 191 U. S. 207, 24 S. C. 124, 48 L. ed. 148, quoting from Judge Dillon's opinion in City of Clinton *v.* Cedar Rapids and Missouri River R. R. Co. (1868), 24 Iowa, 455, p. 475.

electing officers, and carrying on a local government perhaps for years. Nevertheless the legislature may repeal the charter or change it at will, for the charter of a city is not a contract between itself and the state.

THE METHODS OF LEGISLATIVE CONTROL

The old-fashioned system of legislative control over cities had certain definite characteristics. As a local settlement grew from villagehood into something larger, leading citizens would feel the need of municipal incorporation in order to provide more adequately for local improvements and police. At their behest the local member of the legislature, usually a man untrained in such matters, and without reliable sources of information on charter-making, would probably introduce a bill at the next legislative session providing for a local charter. In most cases such a charter would be copied in large part from the existing charters of neighboring cities, bad features being taken along with good. The municipal powers would be written down in detail in an evident attempt to cover everything needed. The local member or members would then exercise their influence to have the charter pass. In some cases they would be compelled to trade votes with other members or "log-roll" in order to accomplish their purpose. In most cases, it is safe to say, the majority of the legislators took no interest whatever in such measures. In many cases the charter, by its own terms, did not go into effect until approved by the local voters at an election, but unfortunately a popular vote of ratification cannot make a bad charter good.

Thereafter charter changes would be made by other special acts of the legislature. The local representatives usually framed such amendments, but in some cases outsiders would do so as a means of attacking the city. Certain large cities have a genuine grievance against the legislatures of their states on account of the ruthless manner in which the latter have thrust their hands "into the very minutiæ of city government."[9] This has been particularly true where one party controlled the city and the opposing party controlled the state legislature. By such piecemeal, arbitrary, and ill-devised amendments, city charters grew and changed from session to session. Only at long intervals would there be a complete codification of an entire charter.

Progress in most fields of legislation is from the special to the general.

[9] McBain, *American City Progress and the Law*, p. 3.

As the number of bills for special laws increased from year to year, some legislatures, in order to save themselves from a great burden of work, resorted to the passage of a few general laws upon certain municipal subjects. Carried to its limit this would have meant ultimately, in each state, a general municipal code, but no legislature has gone this far unless compelled to do so by constitutional provision. Consequently the average city could ascertain its charter provisions only by studying *first* its original charter, *secondly* all subsequent special laws amending the charter, and *thirdly* whatever general laws there might be on municipal affairs. This is still the case not only in New England but in many other states as well.

But how could such charter provisions be enforced, when it was difficult even to know what they were? The states were very slow in the past century to develop any executive or administrative machinery to supervise local government. Such a development was unsuited to the times; it would have shocked American sentiments relative to local self-government; and it would have imposed a new financial burden on the state. At the same time the legislature itself was an unsuitable organ for the purpose. A numerous and therefore a clumsy body, inexpert in municipal matters, meeting for but a few months every year or two, and fully occupied during its short sessions with legislative matters, it had enough to do to pass laws. Practically speaking there was but one way in which charter provisions could be enforced and that was through the courts.

In other words, legislative control could be enforced only through judicial action. Ultimately this is regulation by lawsuit. The courts may, of course, do nothing until cases are brought to them. Cases involving municipal matters may get into the courts in several ways. The local prosecuting attorney of the state may induce a grand jury to indict particular local officials for the grosser violations of charter provisions. One local official or board may bring action against another to compel the latter to do his duty or to refrain from exceeding his powers. Or a local taxpayer, to protect his own interests, may himself bring action against officials to prevent illegal actions or expenditures, or for other purposes. Such a method of control is obviously very uncertain in its operation. A taxpayer must have a large measure both of money and of courage to resort to law to compel the performance of official duties. There are many communities in which the "healthy habit of going to law" in behalf of public interests has not yet developed. In such places violations of the charter may

go on year after year without let or hindrance. Officials interpret their own powers and duties, and carry them out as they please. They are almost a law unto themselves. Indeed even where uniform laws govern cities or counties it is perfectly well known that local practice varies from place to place.[10] How much more must cities under special charters be guilty of frequent thoughtless or deliberate violations of law!

It has become entirely clear in the United States that, standing alone, legislative control may be the cause of much harm to cities, but cannot accomplish much good. We have been prone to criticise legislative control over cities because of the occasional evils which have been inflicted on cities by undue legislative interference. As a matter of fact, however, grievous as have been its sins of commission, the system is more open to criticism because of what it fails to do than because of what it does to excess. No one has expressed this truth better than Sidney Webb: "At the other extreme" from the centralized bureaucratic system of control over cities in France, says this writer, "stands the organization of local government in the United States where the cities and townships are, broadly speaking, autonomous corporations, not in the least subordinate to the State or federal executive departments, and standing even to the State legislatures in no more intimate or subordinate a relation than the Government departments themselves. There is, accordingly, in such a country, nothing in the nature of an administrative hierarchy, and nothing in the nature of a national system, whether in education, sanitation, or means of communication. This, which has its merits as well as its characteristic drawbacks, may be termed the Anarchy of Local Autonomy. It has given the United States the worst local government of any State claiming to be civilized." [11]

SPECIAL LEGISLATION FOR CITIES

Approximately three-fourths of the state constitutions to-day include provisions forbidding the legislatures to enact special laws for cities. These prohibitions are of different forms and they vary also in scope.

[10] See for example *Report of the Special Joint Committee on Taxation and Retrenchment*, New York, Legis. Doc. (1923), No. 55, p. 9; James, *Local Government in the United States*, pp. 111–119.

[11] Preface to J. Watson Grice, *National and Local Finance*, p. vii. But though local government in the United States leaves much to be desired, we cannot agree that it is the worst to be found among states claiming to be civilized.

Some forbid only the incorporation of cities by special law whereas others attempt to go the entire length of prohibiting any and all special laws relative to municipal affairs. It is impossible, therefore, to generalize broadly upon the effect of such prohibitions. At the same time certain results are quite generally recognized.

In the first place it must be remembered that any prohibition against legislative action will be strictly construed. That is to say, a prohibitory clause will not be held by the courts to prohibit things not mentioned. The mere fact that a legislature is forbidden to *incorporate* cities by special law cannot be stretched to prohibit it from amending city charters or from adding to municipal powers by that method. Thus in some states the people have learned that the constitutional inhibition is not as drastic as they had thought it to be.

Secondly, to prohibit special laws as to municipal affairs is merely to forbid *one form* of legislation. It does not go to the heart of things. It does not prohibit every form of law upon the subject, and certainly does not establish any great measure of local freedom. Indeed some state constitutions expressly state that general laws may be passed in all cases where special acts are forbidden. Now it is not to be expected that courts will become unduly excited over the mere form of an enactment. They will, of course, enforce the constitution, yet they feel that the form of laws should be left to the judgment of legislators and they will often yield to that judgment.

Furthermore the question arises, what *is* a "special or local" law? What is a general law? The laws against robbery and murder apply to all persons, but must every general law have so wide an application? Many of our most useful laws apply to small groups. Telephone companies are required to render certain public services. Street railway companies may not charge over a certain fare. Persons having incomes over a certain amount must pay income taxes at rates higher than those for persons of smaller earnings. Public contractors and public officials are under laws peculiar to themselves. Yet all of these laws are or may be general, since they include in each case all persons of the particular class. Indeed a general law is not necessarily one having a universal application but one which applies to all of a certain distinctive class.

To be sure, the classification must be a reasonable, not an arbitrary one, for the purposes of the law. It would be unreasonable to provide that in all cities where the "avenues" run north and south, and the "streets" run east and west, there shall be a girls' vocational high school, since there is no logical connection between the orientation of

streets and the need of such an educational institution. On the other hand, it would be quite reasonable to provide for such a school in every community where at least three thousand girls graduate each year from grade schools. It might even be reasonable to require one in each city of over a certain population. In either of the two latter cases the law could be considered general, since it is based upon a proper classification and applies to all within the class. Nor does the fact that there may be only one city of the size in the state invalidate the classification. The number in the class is not the test. There may be "one or a thousand," yet the class may be complete. Philadelphia is the only city of the first class in Pennsylvania to-day; Pittsburgh is alone in the second class. If the classification is based upon genuine and not factitious differences it can be sustained.

We have here stated the attitude of the courts when called upon to declare whether a law is general or special. It is not hard to see that legislators who wish to accomplish some special purpose are in a position to take advantage of such rules. All that is needed is to work out a classification which includes a certain place or places and excludes all others. For this purpose legislatures have resorted to classifications of cities based upon their population, upon their location with regard to lakes and rivers, upon the forms of their governments, upon the amount of their outstanding debts, upon the nature of their charters, whether special or general act or home rule, and upon the presence or absence of certain natural or artificial features. Taken by itself any one of these bases may be perfectly proper unless carried to the extreme. For example, cities of different size have different needs and it is quite proper to make a few broad population classes for purposes of legislation. In Ohio before 1902, however, the classification of cities for legislative purposes had become so minute that eleven leading cities stood in eleven different grades, each city being in a class by itself. This is the outstanding example of this type of abuse, and the Ohio supreme court was finally induced to declare this whole system of classification unconstitutional.[12]

More difficult to attack, however, is the classification which rests upon a double or threefold basis. For instance in Minnesota there are three cities having over 50,000 population. From 1900 to 1920 two of these cities, Duluth and St. Paul, had home-rule charters while Minneapolis continued under an old special law. For many years the

[12] State *ex rel.* Knisely *v.* Jones (1902), 66 Ohio St. 453; McBain, *The Law and the Practice of Municipal Home Rule*, pp. 68–74.

legislature enacted numerous laws applicable to all cities of over 50,000 population not operating under home rule charters. It was so obvious that these acts applied only to Minneapolis that, in printing the laws the secretary of state gratuitously inserted bold-face headings over many of these acts to indicate that they applied to this city alone. This classification was entirely legal despite the fact that the state constitution expressly provides that "the legislature shall pass no local or special law . . . regulating the affairs of . . . any . . . city." Still more striking illustrations could be given of the fact that many special laws masquerade in a garb of generality. Some legislators become peculiarly skillful in devising such disguises for bad laws. If special legislation must be passed it would be far better to have it frankly and unevasively special. Cities would then at least know what laws applied to them, whereas laws based upon complex classifications may be so confusing as to raise doubts as to what cities come within their terms.

It is not easy to enforce a constitutional prohibition against a state legislature. Let us suppose that a law which is actually special is passed in the face of a prohibition against such acts. Unless the act affects adversely some very important local interests it will in all probability be enforced despite its illegality. The only way to prevent this is for certain local officers or private citizens to appeal directly to the courts, possibly at a sacrifice of time and money. Such a method is expensive and slow, and never certain.

Enough has been said to show that the attempt to prevent legislative meddling in local affairs by forbidding special legislation has not been entirely successful. This does not mean, however, that no good whatever has resulted. Very few intelligent citizens would now advocate a return to the régime of special legislation for cities. In the states where special laws are forbidden there has been a great decrease of special interference in local affairs by the legislature, due largely to the existence of such prohibitions. The high-minded legislator who dislikes to serve as the agent of special local interests can now point to the constitution as forbidding the desired special act. In place of numerous special laws, state legislatures now enact more general municipal legislation than ever before, and such legislation, besides being usually well-considered, has the added advantage of introducing some uniformity into municipal affairs. In this connection it is interesting to note that general municipal codes for all cities or for cities of certain large classes have been adopted principally in the states where special

legislation for cities is forbidden. Among these states are Illinois, Indiana, New Jersey, New York, Ohio, and Pennsylvania.

Ohio gives us the best example also of a state attempting to govern all its cities, large and small, under a uniform and fairly rigid code. When the supreme court's decision in 1902, reversing many earlier decisions, declared the existing system of legislation for cities to be invalid, because it really amounted to special legislation, the legislature was convened in special session to enact a complete municipal code. The code was enacted and put into effect, but the results were not entirely happy. The experiment proved one thing beyond peradventure. Cities of different sizes and various problems cannot be governed to their own satisfaction under a uniform and inflexible law. Special legislation undoubtedly has its uses. If the legislature cannot be trusted to pass such laws, then someone else must be given the power. The final solution in Ohio was a scheme of municipal home rule, whereby cities make and amend their own charters. Other states have reached the same conclusion in different ways.

In Illinois the chief problem of city and state relations is that of the state's control over Chicago. The city proper contained, in 1920, 2,701,705 people, which is over 40 per cent of the state's population of 6,485,280. The next largest city was Peoria, with 76,121 inhabitants. It is clear that Chicago has certain special problems which other cities in the state do not face. The Illinois constitution, adopted in 1870, forbids special legislation for "incorporating cities, towns or villages, or changing or amending the charter of any town, city or village." Chicago was then governed under a special charter which could not thereafter be amended by special act. Other cities found themselves in a similar predicament. Thereupon the legislature enacted in 1872 a general municipal incorporation law which provided for both the organization and powers of all municipalities which chose to adopt it. Cities, towns, and villages were quick to take advantage of the opportunity thus given. Within a few years a large number of cities voted to come under the law. Even Chicago (1875) found the new law preferable to its special charter. The general law had the advantage of conferring a considerable range of powers, and also of permitting the creation of certain local offices by ordinances of the city council. To-day all the incorporated cities and villages of the state having over 25,000 population are operating under the general law.

Despite the fact that the legislature has improved the general law

from time to time and has amplified the powers of cities by certain optional laws, Chicago has found that it is inconvenient for it to be governed under a scheme so evidently designed for smaller cities. In order to permit the legislature to make special provisions for the metropolis the state constitution was amended in 1904 so as to authorize the enactment of certain laws for the city of Chicago alone. It was provided, however, that "No law based upon this amendment to the Constitution, affecting the municipal government of the City of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question." In other words, while the legislature may pass such general laws as it pleases as to cities generally, it may not put into effect any law for the city of Chicago alone without the consent of the local voters. Through the local referendum the voters have an absolute veto upon such special acts. With this power reserved to the voters there can certainly be no strong objection to special legislation. But while some good has been accomplished by this provision, the measure does not amount to municipal home rule, since the power of initiating and formulating measures is still left with the legislature.[13]

The problem of state control in New York down to 1923 was similar to that in Illinois, but the constitutional provisions involved were different. Under the constitution adopted in 1894, cities were divided into three classes. Those having 175,000 population or more constituted the first class; those having 50,000 and over, but less than 175,000 were in the second class; all others were in the third class. A "general city law" was one which related to the property, affairs, or government of all the cities of a class; a special city law was one which related "to a single city, or to less than all the cities of a class." Any special city law, after passing both houses of the legislature, had to be submitted to the corporate authorities of the city or cities directly concerned, whereupon public hearings were held. In first-class cities (New York, Buffalo, and Rochester) it was the mayor who had to express approval or disapproval of the bill; in other cities the mayor and council. Bills accepted by the local authorities went to the governor. Those not accepted went back to the legislature which might repass them or drop them at its option. In either case the governor had the power of veto. This provision amounted to giving the city officials the power to protest against bills obnoxious to them. The

[13] Illinois *Constitutional Convention Bulletins*, No. 6, Municipal Home Rule, pp. 382–398.

local electors might be heard, but it was not they who had the power of protest. There was no referendum, and no absolute local veto.

The question arises as to how effective this system was in preventing the more pernicious forms of legislative interference in local affairs. Those who studied the situation were much encouraged by the results. There was apparently a steady decline in direct or positive interference by the legislature. From 1910 to 1915, according to a careful tabulation, 983 special city bills became law in New York state, but of these only 8 had been disapproved by the cities concerned.[14] It is evident, however, that there was still a great deal of special legislation. Furthermore, cities not only had special laws passed over their disapproval, but also failed to get laws enacted which citizens or officials or both really desired. In the period of 1910 to 1915 the governors vetoed 201 bills passed by the legislative chambers and accepted by the local authorities. How many desirable bills failed even to pass the chambers we have no means of knowing. Because of their dissatisfaction with this system of control, city officials and others continued to agitate for municipal home rule, and in November, 1923, a home rule enabling provision was finally written into the constitution.

The attempt to forbid special legislation for cities has not been entirely successful. More important, however, is the question as to whether it has been beneficial as far as it has gone. In some states it has compelled the enactment of general municipal laws which in some cases are fairly rigid codes. In other cases it has been necessary to authorize cities to make and amend their own charters. At the same time, cities have been spared much special interference with their local governments. State legislatures have also been somewhat relieved by such prohibitions. It is entirely clear, however, that absolute uniformity in municipal government is not desirable. Cities have differing requirements, arising out of the multifarious factors in their history, social composition, location, size and environment. Public opinion in one city will demand services not considered important in a neighboring municipality. If progress is to be made cities

[14] Another tabulation covering the city of New York from 1900 to 1921, inclusive, shows 1606 special laws enacted for that city, of which 36 were repassed by the legislature and signed by the governor after the mayor had expressed his disapproval. Of the 36, 19 came in the years 1900 and 1901. MacMahon, *The Statutory Sources of New York City Government*, p. 155. This work is one of the best intensive studies to be found covering certain phases of legislative control over cities.

must be allowed to make experiments which it would be absurd to compel all cities to attempt at once. Some authority must have the power to grant such special powers from time to time. The danger inherent in the vesting of such power in the legislature is that this body, which is not responsible to the local voters, may at times use it in a manner detrimental to the local community. The proper corrective for such abuses is, very evidently, not to forbid all special legislation but to make it subject to a local referendum as in the case of special legislation for Chicago. Such a plan might be useful even where cities have the power of home rule. In the latter case this would amount to giving the legislature the power to propose home rule charter amendments subject to adoption by the local electorate.

REFERENCES

See the references at the end of Chapter IV.

CHAPTER IV

THE CITY AND THE STATE

II. Home Rule and Administrative Control

The actual relationships of American state governments to the cities under their jurisdiction have in recent years undergone a considerable change. Throughout the nineteenth century most state legislatures were still trying to control municipal affairs by general and special laws, very largely without the aid of strong state administrative departments. In the twentieth century we see a strong trend toward municipal home rule supplemented and checked by state administrative control. Local charters and other local laws are being enacted more and more by the cities themselves. This phase of the new tendency we shall call municipal home rule. The state is not losing its control over cities, however, but is exercising its powers less through special legislative enactments and more through state administrative departments and boards which are given broad powers for the purpose. This we shall call state administrative control over cities. Both of these tendencies, it may be noted, are manifestations of the inability of state legislatures to do everything, and of the need which they feel of devolving broad powers upon other authorities more familiar with the problems to be dealt with.

MUNICIPAL HOME RULE

The attempt to limit the legislature's power to do evil in city government by forbidding it to enact special laws therefor is a device peculiarly American. The further effort to secure a sphere of local self-government for cities by authorizing them to frame, adopt, and amend their own charters, is an even more striking departure from traditional methods of control. It is an important contribution toward the solution of a vexatious problem.

Beginning with Missouri in 1875, the idea of municipal home rule was next taken up on the Pacific Coast by California and Washington.

Thence it again moved eastward, including states as far north as Minnesota and Michigan, and as far south as Texas, until it reached the Atlantic Ocean in Maryland, Pennsylvania, and New York. The National Municipal League has espoused this reform and is advocating it throughout the land. Altogether fourteen states have now written the municipal home rule principle more or less completely into their constitutions. In Maryland, only Baltimore, and in Missouri, only St. Louis and Kansas City, are as yet empowered to adopt home rule charters. In Washington only cities of 20,000 population or more have this authority; California, Colorado, and other states set still lower limits; while in New York any city, in Oregon any city or town, and in Minnesota and Michigan any city or village, may adopt a home rule charter. Excluding the state of Pennsylvania, where the home rule power is yet to be conferred by statute, we find that all told 103 American cities of over 25,000 population (1920) have the power of municipal home rule to some extent. This number includes New York, Detroit, Cleveland, St. Louis, Baltimore, Los Angeles, Buffalo, San Francisco, Cincinnati, Minneapolis, Kansas City, Mo., Seattle, Rochester, Portland, Ore., Denver, Toledo, Columbus, St. Paul, Oakland, and Akron, or 20 of the 33 American cities having over 200,000 population each; and of this 20, practically all have now had time to make some use of their authority. In Minnesota alone, 70 cities ranging from a population of about 1,000 up to Minneapolis with nearly 400,000 inhabitants, have adopted home rule charters. In California, Texas, Michigan, and Ohio also a large number of cities, great and small, have made use of the privilege of more complete self-government. The movement is no longer in its infancy. When Pennsylvania fully enters the list of municipal home rule states, more than two-fifths of the American cities having over 25,000 population will possess the power of municipal home rule.

Generally speaking the constitutional provisions for municipal home rule lay principal stress upon the power given to cities to make and amend their own charters. This is considered to be the essence of home rule. Just as the states in the federal system may frame and amend their constitutions without the consent of the national government, just so cities in "home rule states" are empowered to make their own charters of local government instead of receiving them ready-made as concessions from the state legislature. A number of the constitutions lay down in considerable detail the procedure to be followed in charter-making. In general it may be said that a local charter

commission is almost everywhere provided for. This body is in nearly all cases elective by the voters, the election being called by the council either voluntarily upon its own initiative or compulsorily upon the petition of a certain percentage of the voters.[1] The charter commission is usually a body of from 13 to 15 members. Within a certain period after its appointment this body must report its draft of a new or revised charter, and in all cases the proposed document is submitted to the voters for their approval or rejection. If adopted by the requisite majority the charter usually goes into effect without further action, superseding the existing municipal charter. In a few states such charters must be submitted to the governor or legislature for approval, but this has been a mere formality in practice. Once in effect the new charter may be amended by proposals made therefor either by the council, the charter commission, or a proper petition of the voters, followed by ratification at the polls. Nothing can be done finally without the consent of the voters themselves.

A notable departure from the ordinary home rule procedure is provided by the constitution and laws of New York. The local legislative body or council, plus the board of estimate and apportionment, if there is one, is empowered to draft and to adopt all local laws or charter amendments of a routine or minor character without a referendum thereon. The mayor in each city has substantially the same veto power over local laws as he has over ordinances. For the adoption of a new charter, as well as for the enactment of certain more important amendments specified in the laws, a referendum is required. In addition there may be a referendum upon certain other types of local laws, also specified in the statute, in case fifteen per cent of the voters petition for such reference to the voters within 60 days after their adoption. Furthermore the council may submit to the voters the question: "Shall there be a commission to draft a new city charter?" and may provide for the election or the appointment of its members as it sees fit, subject to approval by the voters.[2] Altogether the New York procedure for amending city charters is a more simple and flexible one as it relates to minor amendments than is to be found in other states. It gives more power to the city council and less work to the

[1] In Minnesota the district judges appoint the charter commissions. In some states there is usually a preliminary referendum on the question of whether a charter commission shall be elected.

[2] See the amendment to Art. XII of the New York constitution adopted November, 1923, and Laws of 1924, ch. 363 (Consol. Laws, ch. 76).

charter commission than is usually the case, and it puts less stress upon the referendum.

We must ask ourselves what is meant by saying that a city is authorized to make and amend its own charter. What is a charter? In another place we have defined a city charter as "the written instrument, authorized or granted by the state, by virtue of which the city is given its corporate existence, its powers, and a certain form of government." But what are the powers of a city as distinct from those which a city or any one of its officers exercises on behalf of the state? It is often impossible to say. Surely, however, a city in making its own charter may not arrogate to itself powers which the state as a whole needs to exercise for the people as a whole.

As is usual in the United States, the question here raised has been thrown into the courts in the different home rule states in a series of specific controversies. The city of X sets up a police court under its home rule charter. Another police court already exists in X under state law. Which is the legal body? The city of Y provides in its charter a scheme of letting municipal contracts which is new and differs from the general state law upon the subject. Does the charter or the law prevail? To settle such controversies the courts have needed a few guiding principles or at least catch-phrases to apply. One point upon which they seem fairly well agreed is this, that a municipal home rule charter must restrict itself to "municipal" or "local" affairs unless the constitution quite specifically gives a wider power. The test is one which might have been anticipated inasmuch as the earlier home rule provisions generally made home rule charters subject to the state laws and constitutions. The actual result, however, has been at times to deprive cities under home rule charters of powers which they had formerly possessed under legislative charters. Thus in different states they have been denied the power to establish municipal or police courts, to regulate their own elections, to fix the rates of local public utilities, to annex territory, and in fact to do a number of other things. In other words, these were held to be non-municipal matters, or in the nature of state affairs.

The natural outcome of some of these decisions was a movement for the more definite statement of municipal powers in the constitution itself. In California several amendments have been added to the original home rule section for the purpose of guaranteeing certain powers to cities beyond question. The Ohio provision, drawn up in the light of the experience elsewhere, not only authorizes cities to "exercise

all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws," but also states the nature and limits of some of the other powers which may be exercised. The New York provision specifies a number of subjects which may be regulated by local laws locally adopted, but it also forbids cities to interfere with the local school systems.[3]

It is not to be inferred from the fact that cities have been granted the charter-making power, that the legislature has lost all control over municipal affairs. The contrary, indeed, is the case. To many exponents of municipal home rule it has seemed that the legislature retains too much power in charter matters. Even in California and Colorado this power is by no means negligible, while in Ohio the constitution expressly reserves to the legislature the power to limit cities in the levying of taxes and the incurment of debt. The Minnesota constitutional provision authorizes the legislature to "provide general laws relating to affairs of cities . . . which shall be paramount while in force to the provisions relating to the same matter" included in home rule charters. Such reservations of power are designed to accomplish several objects. In the first place they help preserve the sovereignty of the state. Secondly they make it possible for a superior body to overrule a peculiarly obnoxious local charter provision, and thirdly, they also permit that superior body to establish a certain amount of uniformity in, and central supervision over, municipal affairs.

The most distinctive feature of a home rule charter system is the fact that it transfers the power of initiation from the legislature to each city itself. The local voters adopt and amend their charters without as much as a "by your leave" to the legislature. They organize the local government and confer such powers upon it as they think best. To the legislature is left in most home rule states a certain checking power, a power of control to prevent abuses, but this is quite different from its former power of deciding all things in advance. In states where home rule is not the fact the legislature prescribes for cities each thing they may do, without saying whether the function is a municipal one or not. In home rule states cities simply go ahead doing whatever they think they have power to do. If any question comes up the courts decide whether the thing being done is or is not a municipal function. Each city under home rule may have a charter

[3] New York constitution, Art. XII, secs. 3, 7, as amended in 1923.

notably different from that of every other. Special legislation is enacted by each city for itself.[4]

We naturally raise the query, What good has come from municipal home rule where it has been tried? Has the plan proved a success? These questions cannot be answered absolutely. We have no absolute standard of values to apply. In the field of government, as in all problems involving human society, men differ as to what is good or bad, successful or unsuccessful. We are, however, able to point out some relative differences between a home rule charter system and a system of legislative charters. The important question is whether home rule is not better than complete legislative control if even in only a small degree.

1. "The first element of good government, therefore, being the virtue and intelligence of the human beings composing the community," says Mill, "the most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves." [5] This writer argues most cogently for a high degree of local self-government largely because of its educational value to the people. If it is desirable to put the undivided responsibility for good local government directly on the voters themselves and to compel them to educate themselves on municipal questions, the home rule charter system is far and away better than a system by which legislators, perhaps at the behest of a few interested and influential persons, pass charters of local government of which the voters have little knowledge and for which perhaps they have less taste.

2. If the "pitiless publicity" of an election campaign is preferable to the devious ways of legislative committee rooms, home rule is a desirable device. In the latter system, charters and amendments must be published and explained to the voters concerned before they can be enacted. One of the chief objections to legislative charters and amendments has been the lack of notice and publicity.

3. Reasons have been given elsewhere why it is often necessary and useful to have the charter of one city different from that of another. At the same time it has been American experience that it is not always safe to permit the legislature to pass special laws. The home rule

[4] Municipal home rule might, in fact, be defined as the power conferred upon cities by the state constitution to adopt for themselves special and local laws which the legislature is forbidden to enact. The New York constitutional provision most clearly illustrates this point.

[5] *Representative Government*, Ch. II.

scheme provides a means by which each city may have just the charter that it desires, without any danger of improper legislative interference.

4. The legislators themselves, in states having a home rule charter system, are to a large extent spared from being approached by the numerous lobbyists who used to appear at legislative sessions with special bills which they desired enacted. This means, also, that the state is now spared the expense of enacting and printing the numerous special charter laws of olden days, and that the legislators have more time to spend upon general laws of statewide importance. Indeed, the effect of municipal home rule upon legislative bodies is very generally wholesome.

5. Taking them as a whole it is fair to say that home rule charters are generally better drafted, *i. e.*, shorter, clearer, more definite and yet more flexible than those which have originated in legislative bodies. The latter are inclined to be unduly long, wordy, and replete with involved legal clauses. Moreover, whether for good or for ill, the home-made product is also more likely to embody new and bold experiments in political organization. The Dayton city manager charter of 1913, the Cleveland manager plan charter with proportional representation of 1921, as well as others may be mentioned in this connection. Charters enacted by state legislatures are, in the main, distinctly unoriginal and unimaginative.

6. When municipal home rule was first proposed, doleful predictions were made of the overthrow of the state government. It was feared that the cities under home rule charters would snap their fingers in the face of the state's officials, and perhaps secede entirely. In like manner the downfall of the British Empire has been predicted at its every move toward giving more self-government to the dominions. Both prophesies have failed to come true, though for different reasons. The state governments of Ohio, Michigan, Minnesota, and California are as strong as ever. Cleveland and Cincinnati are as much a part of the state of Ohio and as loyal to it to-day, as Chicago is a part of Illinois or Boston of Massachusetts.

What has here been said may be taken as summarizing the beneficial results of municipal home rule. Partly offsetting these results is the fact that the home rule method of framing and adopting charters is clumsy, slow, and expensive. It is particularly troublesome and costly to have to submit all charter amendments to a popular vote.[6] At the

[6] These criticisms do not apply to the New York home rule provisions in the same measure as to others.

same time, mistakes are often made. Measures are tried which prove a failure in practice or are found unconstitutional by the courts. A new duty is imposed upon the courts, namely, that of deciding what are proper "municipal functions." A new line is coming to be drawn between state and municipal functions; and in the long run it may not be all to the advantage of the cities to have this distinction made.

Most of these defects are, it will be observed, the defects of democracy itself. Popular government makes progress usually only by trial and error, and sometimes at great cost. For this reason timid souls often urge a "return to the constitution" or to "fundamentals." Democracy itself refuses to listen to such advice. It presses forward ceaselessly. The municipal home rule states show no signs of turning back, but instead move further and further forward. The mistakes which are being made are largely inevitable. They will be obviated, if at all, when voters are more interested, better educated, and better led. The establishment in city government of permanent staffs of trained administrators will do much in this direction. Democracy is a school, but Mill says, "a school supposes teachers as well as scholars." The local citizens, immersed in their private business affairs, are not in the best position by themselves to solve the problems of local government. They need teachers who will work with them. The hope of an efficient democracy rests upon the possibility of getting a class of permanent skilled officials, and an ever-increasing class of educated, public-spirited citizens,—better teachers and better pupils. The American home rule city more than any other is in a position to encourage the expert and to train the citizen. It is at once a school and a laboratory.

STATE ADMINISTRATIVE CONTROL OVER CITIES

Thus far in this and the preceding chapter we have dealt with state *legislative* control over cities and with home rule as a substitute therefor. This form of control is directed particularly to the making and changing of city charters. Another form of control is possible and is already making considerable headway in this country. We refer to what is usually called *administrative* control, or the more or less extensive control exercised by state administrative officers and departments over city officials in the day-to-day administration of their functions.

In the early part of the last century American state government was characterized by the complete centralization of legislative power in the

state legislature, coupled with an almost complete decentralization of administrative powers. "In America the legislature of each state is supreme," wrote de Tocqueville; "nothing can impede its authority; neither privileges, nor local immunities, nor personal influence, nor even the empire of reason, since it represents that majority which claims to be the sole organ of reason. Its own determination is, therefore, the only limit to its action." [7] Indeed he thought that, because of this fact, American states were too highly centralized.

But in the administration of laws he found the situation just reversed. "Nothing is more striking to a European traveller in the United States than the absence of what we term the Government, or the Administration. Written laws exist in America, and one sees that they are daily executed; but although everything is in motion, the hand which gives the impulse to the social machine can nowhere be discovered." [8] The reason for this was, as he pointed out, that at that time in America, the laws were executed by a whole host of locally elected or locally appointed functionaries, in townships, counties, and other local units, who were responsible to no central state official. Their only responsibility was to the law and to the local community.

How can we explain this complete administrative decentralization? Why were there no central officers or departments who could command local officers to do and to refrain from doing? The doctrine of local self-government is undoubtedly deep-seated in American habits of mind, yet this fact alone will not explain so striking a condition. We must remember also that government in the days of "Good King Andrew" was reduced to its lowest terms. People opposed every sort of governmental interference with their private affairs, and were particularly suspicious of central government officials. But in addition, the state obtained its revenue almost wholly from the most unpopular form of taxation, direct taxation of property, and it could better afford to tolerate poor local administration than to risk the criticism involved in increasing the taxes for state purposes. Then, too, there were frontier conditions in many of the states. Means of transportation and of communication were poor and expensive. Settlements were scattered and in some cases the state capital was several days' travel from certain portions of the state. Under such conditions the people, far from demanding any considerable extension of the state's administrative activities, resisted attempts in that direction and grumbled long

[7] *Democracy in America*, translated by Henry Reeve, 1904, I, p. 74.

[8] *Ibid.*, p. 58.

and loud over the expense of supporting even the legislature, the militia, and the courts.

But the time came when America awoke to a new set of conditions. The awakening came sooner in the north and east than in the south and west. The states filled up with population. Cities grew apace, creating new problems in education, sanitation, and police. The telegraph and the railroads, and later the telephone and paved highway, brought every part of the state much closer to the capital. The states found new sources of revenue not so unpopular as direct taxation of property. And along with all these changes the people began to throw off their old ideas of individualism and of local self-government. They began to think of the state-unit where formerly they had thought only of the town, village, or small city. They developed a new and more social viewpoint. They came to look upon the government not as a mere police force, but as an agency to be used for statewide social betterment. And thus the old flood gates were opened, and the state found itself drawn or forced into a new stream of social activity. It began to regulate things never before touched by the hand of government, and to provide a variety of new services.

Such is the new condition that we find in America to-day. The state is regulating labor, the relations of labor to capital, factories and mines, public utilities, markets and exchanges, the sale of foods, and many other things. It is providing highways as never before, promoting agriculture and drainage and irrigation, looking out for public health, fostering education, caring for dependent and defective classes, and performing a variety of services impossible to mention here. To do all this the states now employ scores of thousands of civil servants where once they needed very few. Naturally in this expansion of its functions the state has found itself coming into very close contact with municipal governments. They, too, inspect foods and promote health and provide education. Where shall the lines between state and municipal activity now be drawn? And what shall be the relationship of state to city officials? Shall it be war between them, or peaceful coöperation?

Let us first take stock of some of the subjects in which both state and local governments are to-day keenly interested.[9]

[9] The scope and the variety of state administrative activities are best illustrated by the survey reports issued in various states, such as Illinois, Massachusetts, New York, Maryland, Minnesota, and Virginia, as a basis for proposed administrative reorganizations. A collection of state budgets would also present this type of descriptive information. See also Mathews, *Principles of American State Administration.*

Education. While cities and school districts generally provide elementary and secondary schools, the state is becoming interested (a) in equalizing educational opportunities for all children throughout the state, (b) in raising the standards of education considerably above those prevailing in the poorest communities, (c) in adjusting the school tax burden so that people shall pay for school support in proportion to their ability wherever they may live in the state, the money to be spent wherever needed, and (d) in providing a uniform course of study for all schools in certain fundamental subjects.

Health. In this field the state endeavors to protect the people of the entire state by preventing the spread of diseases from one community to another, a thing which no city alone can do, by prohibiting one city from polluting streams and lakes used by others for water supply, by aiding the poorest communities to provide as good public health work as their wealthier neighbors, and by conducting researches, investigations, and statistical studies beyond the powers of any one community.

Social welfare. This is a broad line of work in which cities have always taken an interest and for which the state governments are showing an increasing solicitude. Notably the state provides many of the institutions for the care of diseased, dependent, defective, and criminal persons, thus saving cities and villages from the necessity of making similar provision.

Law enforcement. This also assumes to-day a greater importance to the state as a whole. Some of the commonwealths have provided state constabularies to police rural areas and to supplement municipal police activities. Elsewhere special forces have been created for the enforcement of liquor laws or for other special purposes. In a number of states are to be found state fire marshals to enforce building safety laws and the laws against arson.

Taxation and finance. The state governments are the source from which the cities receive their powers of taxing and borrowing. It is only natural, therefore, that those who oppose increases in local tax rates and debts should resort to the state for protection against the city tax authorities. Furthermore, the local assessment of property for taxation purposes is used also by the state government as the basis for state taxation. Thus it has come about that different states have established state departments or commissions to supervise and to equalize local tax assessments, while others have gone further, providing for a state audit of municipal accounts, publication of municipal

financial statistics, and even, to a certain extent in Indiana, a state veto upon bond issues and increases in local tax rates.

Other functions. In New York a state civil service commission maintains some supervision over municipal civil service authorities. In Massachusetts a state bureau assists municipalities in city planning work.

This brief survey will indicate some of the fields into which the state is entering to supervise and control the administration of municipal affairs. Some functions, such as the regulation of public utilities, have in some states been taken almost entirely away from the cities. But even where the state's action has not been so drastic, it is evident that its interest is increasing. Slowly and by degrees the states are building up their staffs of administrative officers to supervise the activities of local governments. Perhaps this movement will become more rapid in the near future. The state legislature is no longer content merely to "pass a law." It wishes now to be assured that the law will be carried out, and it provides officers and expends money for the purpose.

We must next consider whether the new centralizing tendencies are desirable, whether society as a whole is likely to benefit or to suffer from this increase in state control over municipal functions and officials. Is it well for all parties concerned that the state should not only pass numerous laws regulating municipal affairs, but also send its officers out to supervise local activities? The answer to this question will depend largely upon the form taken by state administrative control.

1. That the state can be of great aid to cities by supplying them with information and advice from central bureaus can hardly be questioned. All local governments, even those of large cities, suffer from the lack of experience and the short terms of their officials. New officials come into municipal offices in a constant stream; they remain in office a few years and retire to private life. They know little of the previous administrative experience of their own city and still less of what is being done in other places. They pass nothing on to their successors. For such officers there is need of central bureaus of information, but such bureaus do not create themselves nor do all officers voluntarily resort to them or make use of their facilities. The state needs to take an active hand in this work.

"The principal business of the central authority," says Mill, "should be to give instruction, of the local authority to apply it. Power may

be localised, but knowledge, to be most useful, must be centralised; there must be somewhere a focus at which all its scattered rays are collected, that the broken and coloured lights which exist elsewhere may find there what is necessary to complete and purify them. To every branch of local administration which affects the general interest there should be a corresponding central organ, either a minister, or some specially appointed functionary under him; even if that functionary does no more than collect information from all quarters, and bring the experience acquired in one locality to the knowledge of another where it is wanted. But there is also something more than this for the central authority to do. It ought to keep open a perpetual communication with the localities: informing itself by their experience, and them by its own; giving advice freely when asked, volunteering it when seen to be required." [10]

It may be said that many American states have already recognized this principle. State departments of health, of education, and of accounts give invaluable advice to cities. State tax commissions instruct local assessors in their work. The attorney general in many a state must give legal advice to municipal officials on request. In some states the universities have set up bureaus of municipal information whose services to municipalities are highly useful when the work is properly done. This is an altogether useful extension of state activity. Few persons would question the value of sound information in the solution of municipal problems.

2. The least objectionable form of state administrative interference with municipal affairs may be described as supervision coupled with the publication of facts. Suppose that the state appoints inspectors for different purposes, who are empowered to go about the state inspecting the work in some branch of city administration, to require local officials to answer questions as to their work, and to publish the results. A state health department might have this power, for example, and might publish annual reports showing their findings as to the relative standings of different cities in matters of health protection. The theory of such intervention is that local public opinion will be aroused in the places where evil conditions are shown, and that salutary changes will be brought about not because the state department orders improvement but because the local electorate arouses itself to act.

There are a number of state departments of health, of education, and of taxation, which began with the limited powers described above.

[10] *Representative Government*, Ch. XV.

But local democracies are traditionally slow to reform themselves, and state officials wish to be able to point to concrete results. They grow impatient waiting for local reform. To accomplish the good which they desire and can foresee, state departments always tend to ask for increased authority. They wish to coerce local officials into immediate action. The legislature, too, sees the need in some cases, and grants the additional authority. Therefore it may be said that the powers of state departments tend to increase. Local authorities are by degrees brought under actual central control. Mere central supervision is a passing phase. It develops into control, more or less strict. Mill recommended this development in his work on *Representative Government* quoted above. He believed that the central authorities should have power to enforce obedience "to every general law which the legislature has laid down on the subject of local management." Just how this should be done, he said, was a question of detail.

3. One method of central control over local authorities consists in the giving of conditional subsidies, or "grants in aid" as they are called in England. Many American states are familiar with state aid for local schools. The state school funds arose in most cases from the sale of school lands originally given to the states by the national government. The annual income from this fund, plus any additional sums of money which the legislature may feel able to appropriate, is distributed to the schools in the various districts. The "power of the purse" thus wielded by the legislature and the state department of education can be and generally is used to raise educational standards. Any district which falls below standard as to length of school term, curriculum, strength of teaching staff, or in any other respect, may be denied its share of the funds. This means that the whole cost of education in such a district will fall upon the local taxpayers, a very grievous thing, and one which they will not often permit to happen.

To this sort of central control there can be very little objection even by the ardent believer in municipal home rule. In practice, however, the results are not as good as they should be. Legislators are often more interested in getting a share of the fund for their districts than in raising school efficiency. Hence they do in fact lay down very few and these very flexible rules as to educational standards. Almost any district finds itself able to qualify for school aid. In the second place, even the state department or superintendent of education is never over-strict in enforcing whatever rules there may be. Finally the funds thus

distributed are usually not as large as they should be to be truly effective. The states find it difficult enough to raise the money needed to support the ordinary state activities. To attempt to raise more is to risk serious public disapproval.

Hence it follows that subsidies or grants in aid are not a very important method of state administrative control over cities in America. Outside of the field of education they are very little used. This is very interesting in view of the fact that the national government is to-day increasing its authority by this method, and that in England the grants in aid are a principal means of central control. May we not suggest that the American states have not exhausted all the beneficial possibilities of this method?

4. There is, finally, the method of direct coercion of officials by legal process. In some cases state departments are empowered to order local authorities to perform certain functions in which the state has an interest, and to proceed against them at law in case they fail to do so, or even to remove them from office. For instance, in some states local health boards may be removed by the state department of health; in others the governor has the power to remove the mayor or other officials. In a few states it is still possible to have indictments brought against a city, and upon conviction the city may be fined for its failure to do its duty.

It is in this connection that we see one of the principal inconveniences in the dual capacity of many city officials. On the one hand they serve the state as agents for enforcing state laws; on the other they serve the local corporation in its more strictly municipal affairs. An officer may be entirely satisfactory to the locality for all local purposes. Should he, then, be removable by the state for failure to perform some state function? And if he is so removed, should the state authorities be permitted to appoint another in his place, one who may be entirely unsatisfactory to the local community for local purposes? Mill urged that "it may be requisite, to meet extreme cases, that the power of the central authority should extend to dissolving the local representative council, or dismissing the local executive: but not to making new appointments, or suspending the local institutions." He urged extreme caution in this whole matter, however. The responsibility for good local administration should be primarily on the local communities. The state should be the teacher, but it should not do all the pupils' work for them.

Before we dismiss this subject we need to give some attention to the

qualifications possessed by state governments for the work of educating, supervising, and directing the work of, local officials. To do their work properly in this field state officers should be learned in the problems of municipal government, professional and non-partisan in their attitude, free from political influence, and secure in the tenure of their offices. When we look into the realities, however, we are compelled to admit that, for all their legal power, state governments are still far from attaining the standards laid down above. County and state governments stand to-day near the bottom of the ladder of efficiency. While the national government and the larger cities have introduced the merit system of appointments, state offices are generally the spoils of the victorious party. Many states are utterly dominated by political machines which have but little interest in the improvement of municipal administration. Their indifference is rivaled only by their ignorance of what needs to be done. This is not to say that all state governments are equally steeped in old-time spoils politics, nor that all departments in any state are equally contaminated. A few state governments have fairly high standards generally, and in almost every state there may be found a few departments which are efficient and possessed of high ideals. Taking the good with the bad, however, we cannot feel very optimistic. The states need to reform themselves before they can expect to do much to reform municipal government. In the meantime cities are not to be blamed if they struggle persistently for more home rule.

It must be remembered, also, that many of the states are so deficient in area, in population, and in resources, as to be unable to provide adequately for the supervision and control of cities. Some states contain only a few cities of any consequence. It may be, as we suggest in the following pages, that ultimately the federal government can do as much for the promotion of good city government as can be done by the states. Whether the state or the nation does the work, however, there is much that badly needs to be done.

Ultimately, it would seem, our discussions of these problems should put less stress upon questions of legal rights and more upon common responsibilities. What is needed is not a continual warfare between state and municipal authorities, but a new coöperation in the working out of important social problems. The city can afford to recognize unreservedly the legal sovereignty of the state if it can obtain valuable state aid and coöperation in performing its functions. The state authorities will usually find that they gain less by an irritating interfer-

ence with the localities than by a whole-hearted joining of hands with local officials.

THE NATIONAL GOVERNMENT AND THE CITIES

When we think of the vast improvements which might be brought about in city government through the intelligent work of state departments in the education of municipal officials in their duties, and in the supervision and control of their work, it is impossible not to give some attention to the national authorities as well. It is true, as we have said, that the national government has no direct control over the government of cities as such. Except in the District of Columbia and in the territories, Congress probably cannot create or destroy municipal corporations, or alter their organization and powers. But this does not mean that Congress has no interest in good city government, or that it has no means of controlling cities, albeit indirectly, or of promoting their progress. Quite the contrary is true. The national government, like the states and the cities, is interested in the welfare of the entire American people, of whom over half now live in cities. It is, therefore, interested in all that the cities are doing to promote the health and well-being of their inhabitants, and its own officers maintain numerous contacts with municipal officials doing similar work. In a hundred ways the national authorities are directly interested in the affairs of cities.

In addition the national government has more authority in municipal matters than we generally ascribe to it. Almost every one of the national powers touches to some extent upon municipal activities. The federal courts, exercising the judicial powers of the United States, are called upon time and again to interpret municipal charters and ordinances, and to stay the hands of city officials who are about to violate the rights of persons under the federal constitution. Under its power to regulate commerce, Congress has assumed extensive control over railways and navigable waters. No city may improve its harbor or bridge or dam a navigable stream except as it conforms to the plans and receives the approval of the appropriate federal authorities. The powers of cities over quarantine of ships, pilotage, and navigation are also federally limited. In like manner we might specify details under the taxing power, the postal power, the power to control federal elections, the power to enforce prohibition, the power over weights and measures, and several other phases of the national powers which bear more or less directly upon the functions of cities. During the recent

war we learned that even the war power of the national government may be used to interfere with some municipal activities, and that cities must to some extent yield to the demands of the national authorities who are prosecuting a war.

In recent years, too, we have observed a greatly increased activity of the national government in fields which were formerly left very largely to the states and cities. The central government has not the power to pass and enforce laws upon every matter which concerns the general welfare of the people, but it has power to raise money by taxation and to expend it in order to "provide for the common defence and general welfare of the United States." Now, "general welfare" is a broad and flexible term, and Congress is almost the sole judge as to what expenditures are needed from federal funds to provide for the welfare of the country. To-day the national government is spending money to improve harbors, to deepen and protect waterways, to build roads, to promote education in the agricultural and domestic sciences, to prevent the spread of disease, to register births and deaths, to suppress the sale of liquors and narcotics (and there are definite federal laws upon these two subjects), to collect and to publish municipal financial statistics, to promote municipal zoning and housing legislation, to study living conditions, working conditions, and educational facilities in cities as well as elsewhere, to provide advice and assistance covering prenatal and postnatal care of infants, and to do or to assist in the doing of a number of other things of most direct concern to cities. In some of these cases the national government is itself actually doing the required work, thus to some extent relieving cities of their responsibility. In others it is appropriating money to state and local governments on condition that they do the work according to rules and standards which it lays down. We already, in fact, have a system of "federal aid" for a number of purposes similar to the "grants in aid" in England, and there is a likelihood that federal aid measures will be increased in the future.

Since the national government and the cities already have a mutual interest in the performance of many important functions, and since the national government is already evincing a deep concern for municipal governments in a dozen different ways, but particularly by the expenditure of large sums of money on municipal services, there is reason to believe that the future holds in store even closer contacts between the national and municipal authorities. For this reason the writer has made bold to suggest that the national government should

make itself one of the principal agencies for providing municipal information, for educating local officials, and for promoting the improvement of local governmental processes.[11]

In comparison with the nation the average state is a poor and small unit for doing this work. "It has inadequate sources of revenue. Its standards of civil administration are not high. It does not attract the ablest men. It is too often dominated by a rural point of view. Its area is relatively small, and there may be but one or two cities of any size within its limits." [12] For these and other reasons the average state gropes its way forward very uncertainly toward the solution of municipal problems. The larger cities in particular are compelled to work out most of their problems without much help from the state. Illinois has little to teach Chicago; Cleveland has little to learn from Ohio.

Let us now set alongside of the state's disadvantages the very obvious advantages of the national government in the attack upon municipal problems. The national area includes all of the cities in which we are interested, but each state includes only a few or at best no very large number. For example, the 68 cities of over 100,000 inhabitants each are situated in 30 different states and the District of Columbia. No state has more than seven such cities, and the majority have only one each. Clearly no single state legislature is in a position to survey the entire scene as the national government is. Furthermore the national government has much greater prestige and resources than are possessed by any state. It can attract able men and it can afford to pay them well. Its standards of administration are generally higher than those of the states, and its point of view is less rural.

The one thing which the central government lacks, and which the states possess, is the power of direct control over cities, the power absolutely to compel or to prevent certain actions. This is not so great a handicap as it would appear to be to constructive national activity in the betterment of city government. Because this constitutional obstacle exists to the national government's assuming direct control over cities, the states have little reason to fear or to oppose an extension of the national government's activities helpful to cities. The national authorities may continue unopposed to serve the cities along present lines. They already supply cities with advice and information,

[11] *National Municipal Review*, May, 1924, XIII, pp. 288–93.

[12] *Ibid.*, p. 292.

conduct researches in which cities are interested, and compile data and statistics of value to municipal officers; and they might well publish pamphlets, manuals, and yearbooks which would be of use in city government. The national government can, finally, render direct aid to cities through its numerous specialists, and it can to almost any extent desired promote particular local functions through grants in aid to be given to cities only on condition that they achieve certain minimum standards in administration of the funds as determined by a federal inspectorate. None of these things would involve necessarily any considerable expansion of national functions as they concern cities, but they would call for a better organization of the present work.

REFERENCES

Percy Ashley's volume entitled *Local and Central Government*, New York, 1906, new edition 1922, is a general survey of the relations of local and central government in England, France, Prussia, and the United States. It is, unfortunately, not up to date. Professor F. J. Goodnow, now president of Johns Hopkins University, laid the foundations for the study of this problem in the United States with his monumental works on administrative law, *Comparative Administrative Law*, New York, 1893; *The Principles of the Administrative Law of the United States*, 1905, and with his monograph on *Municipal Home Rule*, New York, 1903. Five chapters (IV–VIII) in his volume on *Municipal Government*, New York, 1909 (new edition by Goodnow and Bates, New York, 1919), form a valuable survey of the whole problem. Excellent and more up to date are Professor Munro's Chapters VIII and IX in his *Municipal Government and Administration*, New York, 1923.

J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, 5th ed., 5 vols., Boston, 1911, and Eugene McQuillin, *A Treatise on the Law of Municipal Corporations*, 6 vols., Chicago, 1911–13, with two supplementary volumes, in 1921, are the most frequently cited legal treatises dealing with this problem. Reference should also be made, however, to the sections on municipal corporations in the standard digests of the law, such as the *American Digest*, with decennial supplements, *Cyclopedia of Law and Procedure* (to be superseded by *Corpus Juris*), and *Ruling Case Law*.

Professor H. L. McBain, who succeeded Professor Goodnow at Columbia University, has analyzed some of the legal problems of city and state relations with great keenness in his volumes *The Law and the Practice of Municipal Home Rule*, New York, 1916, and *American City Progress and the Law*, New York, 1918, as well as in various articles.

The problem of *special legislation* is dealt with in Dillon, in McBain's *The Law and the Practice of Municipal Home Rule*, Chapters II and III, in C. C. Binney, *Constitutional Restrictions upon Local and Special Legislation in State Constitutions*, Philadelphia, 1894, and in an article by the author in 7 *Minnesota Law Review*, 133–51, 187–207, 1923. Professor A. W. Mac-

Mahon's *The Statutory Sources of New York City Government*, New York, 1923, is an exhaustive analysis of the legal complications resulting from legislative control of cities by both general and special laws.

Municipal home rule has been fully treated from the legal point of view in McBain's work on the subject.

State *administrative control* over cities in the United States has not yet received definitive treatment at the hands of any one. The study made for the state of Oklahoma by F. F. Blachly and M. E. Oatman illustrates what might be done for every state (*Oklahoma Municipalities*, Vol. III, No. 3, October, 1919). To the writer, John Stuart Mill's *Representative Government*, Chapter XV, has proved highly suggestive. On the subject of grants in aid or subsidies as a means of central control the best work is undoubtedly that of Sidney Webb, *Grants in Aid*, new and revised edition, London, 1920.

The relationships of the national government and the cities in the United States have nowhere been exhaustively treated. The author's article in the *National Municipal Review*, May 1924, Vol. XIII, 288–93, merely suggests and outlines the problem. The monograph on *Shore Control and Port Administration*, Washington, 1923, prepared under the direction of the War Department's board of engineers for rivers and harbors, covers exhaustively one point of contact between municipal and national authorities.

CHAPTER V

THE CONSOLIDATION OF LOCAL AREAS

We have spoken of the city's relationships to the state and national governments. We shall not have exhausted the subject of its external relationships, however, until we have dealt with some more immediate neighbors. It is a rule of law that "there cannot be, at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdictions, and privileges," [1] but this does not prevent the existence within the same area of different municipal corporations for different purposes. Indeed, there are very few large cities in the country which do not have at least two and in many cases three or more separate local authorities acting for some purposes within the local area. A list of such possible authorities would be as follows:

The county—a public quasi-corporation, primarily an agent of the state.

The city proper—a municipal corporation for state and local purposes.

The school district—a municipal corporation for a special purpose.

The port authority—" " " " " " "

The park district— " " " " " " "

The sanitary district—" " " " " " "

Other special districts.

It is impossible to state in a word the relationships existing among these various authorities. The situation varies from one place to another. Sometimes an urban county has a smaller area than the city; in some cases their boundaries are identical; but usually the county includes more territory than the city. The school district, on the other hand, has ordinarily the same boundaries as the city, but there are exceptional cases in which the district is larger, and even some instances of several school districts operating in the same city. There is no uniformity in the matter of corporate identity. As a general rule the city and the county have separate corporate existence, but the city and the school district are frequently combined into one

[1] Dillon, *Treatise on the Law of Municipal Corporations*, 1st ed., 1872, sec. 125, p. 166; 5th ed., I, p. 616.

corporation.[2] The fact of corporate identity in the latter case does not necessarily mean, however, that there is unity of control. A private corporation may have but a single board of directors and a single president, but the same municipal corporation may be represented by several distinct authorities, a council and a school board, for example, which have separate and distinct powers of taxing, and of borrowing upon the credit of the same people. Such double-headed or even multi-headed monsters are not unusual in the world of municipal affairs.

In some localities the municipal governments are in a condition of "confusion worse confounded." The Chicago area is a notable example. "The local governments of Chicago and Cook County present . . . . probably the most complex array of local authorities in the world. Within the city of Chicago there are 38 distinct local governments; and in the county as a whole there are 392 separate agencies of local government."[3] The thirty-eight local governments which operate within the city limits are the city, the county, the school district, the sanitary district, the library board, the forest preserve district, the directors of the municipal tuberculosis sanitarium, fourteen towns (eight of which lie wholly within the city and are practically defunct), and seventeen park districts, of which fifteen are wholly within the city limits. The county and the sanitary districts include some territory outside of the city, but get most of their revenue from the city.

The confusion of areas here is not peculiar either to Chicago or to the United States. Multnomah County and Portland, Oregon, furnish another striking case, but almost every American county which includes a large city has something of this confusion. In England at an earlier date there was an even worse situation. Prior to 1832 there was, according to the Webbs, a "chaos of areas, chaos of authorities and chaos of rates," and this situation was aggravated by the Elementary Education Act of 1870.[4] At that time the country was "divided into counties, unions, and parishes, and spotted over

[2] For a partial list of the different units in the government of the larger cities, see *Financial Statistics of Cities, 1919*, table 3, pp. 118–138. In 227 cities of over 30,000 population, this list shows 122 practically independent school corporations; but the list is obviously not complete as to counties.

[3] Illinois *Constitutional Convention Bulletin*, No. 11, p. 905, 1919.

[4] Sidney and Beatrice Webb, *English Local Government: Statutory Authorities for Special Purposes*, p. 480; Lowell, *The Government of England*, II, p. 135.

with boroughs and with highway, burial, sanitary, improvement act, school and other districts." The result was a veritable maze of local boundaries, a bewildering array of local authorities, and an almost indescribable disorder in taxation, police, and public works. The work of simplifying and consolidating the local units finally had to be undertaken, but it was not until 1894 that any appreciable progress was made.

In our country, where we must wait for the states to act separately, very little has been done as yet to solve the problem here presented. The evils and inconveniences arising out of a chaos of areas and authorities are very well understood. They can be readily summarized:

1. The voters are confused and cannot exercise intelligent control over the local government. Urban voters move about a great deal, and under the simplest form of local organization have difficulty enough knowing their voting places and the officers for whom they may vote and what their powers are. How much worse is not their plight where the local areas constitute a bewildering jumble! There is a long ballot to be voted, filled with names of men of whom the voter knows all too little, or else the elections are numerous and frequent and the election expense unduly high.

2. The political boss or ring exercises an unhealthy influence. The boss is the professional expert politician who does the work the voters cannot do, but does it largely to enrich himself.

3. Some of the local areas and authorities are so obscured in the confusion that they almost drop from view. Even the newspapers find difficulty in following their proceedings. There are not always enough reporters to go around. Thus, for example, in most populous centers the city government so completely fills the center of the stage because of its importance that the county government is crowded off into the wings, where it suffers from an unhealthy public neglect. It is out in the darkened wings where political bosses and self-seekers ply their nefarious trades.

4. Where there are many local authorities there is bound to be some unnecessary duplication of work, as well as neglect of some functions. Thus in one city there are two sets of playgrounds, one provided by the school board and another by the park board, yet there is *no system* of playgrounds because of failure of the two boards to work together. There is another case where there are two sets of municipal baths, with two separate supervising authorities, yet there is no system of public baths. Such overlappings frequently lead to

bitter political controversies between the separate authorities, and frequently result in lawsuits between them, all in the name of the public and at the public expense. On the other hand, new functions sometimes fall between two stools, since no one of the existing authorities cares to spend money on it.

5. Another defect consists in the unnecessarily high expense. The overhead expense of carrying along many separate authorities is frequently larger than it needs to be. Furthermore the different authorities often have their own taxing and borrowing powers. Each authority considers its own work the most important thing being done by the city, and pushes it ahead as fast as it can. By this means debts and taxes are increased. It is difficult to bring about central financial control and a unified budget system.

6. Because of the overlapping and duplication of functions, there are a number of officers and employees in different branches of the city's governments who do the same or similar work, but each does only a little of it. This prevents the city from getting the full benefits of specialization and the division of labor.

7. Instead of making uniform progress in all lines, the city advances its activities unevenly. One independent authority will be strong and influential and will get what it wants. Another will lag far behind.

8. A unified, harmonious planning of municipal activities within the common boundaries is difficult if not impossible to bring about. This fact has become especially clear since the public has begun to put so much stress on city planning. How is it possible to bring about united action among the numerous authorities in the city of Chicago? Instead of uniform and orderly progress, the best that can be hoped for is a sort of "muddling through."

While the general problem of consolidation needs to be considered as a whole, there are three distinct problems in the field which are so important as to deserve separate treatment. These are (a) the relationship of the city to the county, (b) the relationship of the city to the school district, and (c) the problem of organization in a metropolitan area.

THE CITY AND THE COUNTY

The principal subdivision of the American state for state administrative purposes is generally the county. In different states the counties vary considerably in area, in population, in functions, and in organiza-

tion. Even within the same state there may be a great deal of diversity in these matters, for large and populous counties do not have the same problems as smaller ones. We cannot, therefore, safely generalize concerning county problems, nor is it necessary to do so.

There are, however, several facts of importance concerning the county which we need to set down here.

1. As a subdivision of the state the county is unlike the city. By adding up the areas of all counties you get the area of the commonwealth. The city, on the other hand, is in a sense exceptional. Its area is limited. The greater part of the area of the average state is outside of city limits, but it is all within county boundaries. Hence, unless a city is large enough to include several counties (as in the case of Greater New York), it either has the same area as the county, or a smaller area, or it may lie in several counties without entirely comprising any of them.

2. The county, unlike the city, was originally a mere agent of the state. It was not a municipal corporation, and had no separate life of its own. It had no charter. It existed under general laws for state purposes and some of its officers were, as some of them still are in certain states, appointed by state authorities. Even to-day the county is essentially an agent of the state, and its officers, although locally elected and compensated, are primarily officers of the state. At common law, therefore, we still find certain marked differences between the city and the county. In organization, too, the county is but little changed from what it was a century or more ago, while cities have undergone striking transformations.

3. But the quickening hand of social change is beginning to touch even the hoary institutions of the county. The process of urbanization has left none of our local areas untouched. While cities, on the one hand, have been drawn more fully into the stream of state and national social life, many counties, on the other hand, have become "citified." They have come to need what only municipal corporations formerly possessed in large measure, a power of independent local action, the right to make local ordinances and to engage in new local services. Thus, while cities which once existed almost exclusively for local purposes apart from the needs of the state, have been changing into agents of the state to serve the larger needs of society, the county which was once a mere agent of the state has been making some progress toward corporateness and a sphere of independent local action. In other words, counties and cities are now approaching the same

plane, but from different directions. Both tend to become at one and the same time agents of the state for state purposes, and corporations for the satisfaction of local needs. If this be true, why should there continue to be both county and city governments in the same area?

4. In political organization and methods the county everywhere lags behind our most progressive cities. This is as true of counties which contain one or more populous and progressive cities as it is of more rural areas. The reasons for this unprogressiveness in counties are not hard to find. (a) In the first place, the state constitutions themselves in a number of cases provide for county government, and it is difficult to change such documents. (b) Most counties are rural, and it must be said that county government has not failed so signally in rural as in urban districts. The rural districts being not unsatisfied with what they have, it is hard to reform urban counties, for counties are primarily agents of the state and it is desirable to have them uniformly organized. In the language of our day it is hard to "sell" the idea of county government reform to rural districts. (c) Political rings of the lower order, deprived of much of their former spoils in city government, have in many places retreated into the innermost recesses of the county government. It is but natural that such groups should struggle tenaciously to hold the territory still left in their hands. (d) Because of the relatively greater importance of city government, citizens and voters in urban districts have paid less heed to county than to municipal affairs. The "fierce light that beats upon a throne" is not turned upon the activities of county commissioners, clerks, and treasurers.

Thus it happens that even in urban counties the progress of county reform is very slow. In such places the county ballot is still very long and cumbersome; the administration is decentralized, uncontinuous, and inexpert; the merit system is still practically unknown; and a true county budget system is a rarity indeed.

5. Although there is a line of demarcation between county and city functions, a careful comparison reveals that there is considerable overlapping and duplication as well. One of the strongest arguments for city-county consolidation is the prospect of reduced expense and increased efficiency through having one department do what two or more are now doing. The proper division of labor, as Mill points out, "does not mean cutting up every business into minute fractions; it means the union of such operations as are fit to be performed by the same persons, and the separation of such as can be better performed by different

persons." [5] It is his conclusion that the *control* of local government in any area is a single business, and that "in each local circumscription there should be but one elected body for all local business, not different bodies for different parts of it."

It will be useful at this point to make a brief resumé of city and county functions, in order to bring out the points at which there is contact and overlapping. What we have especially in mind is a county more than half of whose people live in a city of over 25,000 inhabitants. The discussion must be very general since no two areas have exactly the same conditions.

I. **The means of government.** Both city and county need *men*, *money*, and *materials* with which to do their work. A single civil service department, under either a three-member commission or a single personnel manager, could easily handle the whole personnel problem for both city and county. The same can be said as to the purchasing of materials and the preparation of contracts and specifications for work to be done. There is no need of two purchasing departments. As to finance the principal functions involved are the assessment of property, the collection of taxes, safekeeping, orderly disbursement, accounting, auditing, and reporting. There is generally no duplication in the matter of property assessment. However, some revenues are collected by the city treasurer and some by the county, often to the confusion of the taxpayer. There is then the complicated business of transferring funds from one to the other. There are separate treasuries for the safekeeping and disbursement of funds, separate accounting and auditing officials, and separate systems of financial reports. If these functions can be combined under a unified government why can there not also be a single city-county building, such as many cities already have, instead of separate buildings such as still exist in numerous other places?

II. **The ends of government.** Whether they are means or ends, *legislation* and the *control of administration* are necessary functions of government. Unless city and county problems are entirely different, however, it would seem to be unnecessary to have both a city council and a county board for these functions in places where the city comprises most of the population of the county. The *adjudication of controversies*, both civil and criminal, is also essential to good government, yet it is a unified function, and could well be handled in a metropolitan area by a unified court comprising all the needed judges. Of

[5] *Representative Government*, Ch. XV.

course within the panel of judges there could be as much specialization as circumstances required. There are evident disadvantages in the present organization of courts in many large cities where municipal courts and county or district courts are distinct and separate systems. The *keeping of records* of all kinds is a function, now divided between city and county officials, which lends itself readily to unification.

Another group of functions relates to the *enforcement of law* and the *punishment of criminals*. For these purposes the county, under state law, usually maintains a prosecuting attorney, a sheriff and his deputies, a county jail and perhaps other officers and institutions. A large city within the county may at the same time be maintaining a local prosecutor dealing with violations of municipal ordinances, a police department making arrests for violations of both state laws and municipal ordinances, a city jail, a workhouse, and so forth. The sheriff may, in practice, limit his activities to the area outside of the city, but is not required to do so. Friction between the sheriff's force and the city police is not uncommon.

Education and libraries are in a field in which the city or the city school district does much work, but the county as a rule does little. It is to be noted, however, that leading educators have begun to advocate the county as a better school unit than the smaller school district. *Recreation* is primarily a municipal activity. *Social welfare*, and *corrections*, as well as *health* and *hospitals*, are matters of deep concern to counties, which are daily doing more in these directions. For the city these functions are among the most ancient, and there is some resultant duplication of activities.

There is still more definite overlapping in the provision of *streets* and *highways*. Separate departments do work which could as well be done by one, with greater unity of purpose and a better division of labor. *County planning* is an outgrowth of *city planning*, or better, only an extension of it, for the two depend upon each other.

Enough has now been said to suggest the main problem of city-county relations. A careful study of this problem has led many students to concur in the conclusion of John Stuart Mill, recently restated by Dr. W. F. Dodd: "In order to establish efficiency in local government, it is necessary that there be, wherever possible, but one area of local government over the same territory." [6] City-county consolidation has become one of the planks in the platform of municipal reform.[7]

[6] *State Government*, p. 405.

[7] *Model City Charter* of Nat. Municipal League, constitutional provisions, sec. 8.

We need, however, to understand more clearly what is meant by consolidation. There is a provision in the constitution of Minnesota which reads: "The legislature may organize any city into a separate county when it has attained a population of twenty thousand inhabitants, without reference to geographical extent, when a majority of the electors of the county in which such city may be situated, voting thereon, shall be in favor of a separate organization."[8] This has been thought by some to authorize city-county consolidation, but it is very doubtful whether it goes that far. What it does authorize is the reduction of the area of the county to make its boundaries coincide with those of the city, but that is a very different thing from the complete fusion of city and county into one corporation with one set of officers. Consolidation implies complete unification. The requirements are not fulfilled by a mere coincidence of boundaries. City and county in Philadelphia have had identical areas for years, but the ideal of a consolidated government has never been fully attained.[9]

In many states there are serious constitutional obstacles in the path of unification. Unless the citizens are willing to have the city as a legal entity pass out of existence in order to become a county, they should not, in some states, press too far their desire for consolidation. They need to ask themselves, Shall it be city or county? The pleasant euphemism "city-county" or "city and county" is misleading. The constitutional and statutory provisions governing counties are usually different from and often in contradiction to those governing cities. The latter may have home rule, for example, but does it follow that a "city-county" will have home rule? The only safe thing to do in case of doubt is to procure an amendment to the state constitution which clearly lays down the status and powers of a consolidated city and county.

Almost everywhere consolidation raises difficult questions of boundaries. Shall the city simply separate itself from the existing county, or shall it take in as much more of the county as it expects to need for future growth, or shall it take in the entire county? Of course these questions cannot be settled by the city alone, yet it should know its policy. The first of these three choices is of doubtful wisdom. It is a short-sighted policy, and it will at the same time arouse strong opposition among the taxpayers in the county outside of the city. The

[8] Art. 11, sec. 2.

[9] *The City and County of Philadelphia*, 1923, published by the Bureau of Municipal Research of Philadelphia.

second choice is wiser, yet it will also create opposition. In either of these two cases the city will lose whatever power it now exercises over the outlying areas. The poorer sections of the county, cut off from the power to tax the valuable property within the city, and left to conduct a county government of their own, will of necessity be unable to provide as good highways and other facilities just outside the city as were formerly possible. The third choice offered presents equally great difficulties. What relationship shall the city-county sustain to the smaller cities and villages in the outskirts of the county?

The suggestion of these difficulties does not mean that the reform should not be tried. On the contrary there is to-day such good evidence of the feasibility of city-county consolidation that there is every reason to hope for a successful outcome. Among the larger cities which have already accomplished something in this direction are Boston, New York, Philadelphia, Baltimore, St. Louis, Denver, and San Francisco, of which the last two have made the most thorough-going unifications.[10] Under federal legislation Washington and the District of Columbia also constitute a single municipal corporation.

The most interesting recent consolidation proposal was that embodied in a bill drawn up for the city of Butte and the county of Silver Bow, Montana, in 1923.[11] Despite the fact that the voters failed to approve it when it was submitted to them in 1924, this proposal is likely to serve as a model for other communities. With the exception of school affairs, the consolidation proposed was complete. Within its limits the "city and county of Butte" was to have had all the powers "conferred on cities, towns, and counties" by state laws. The entire power of local government was to have been vested in a council of seven persons elected from the county at large and serving both as city council and county board. The administrative work was to have been carried out under the direction of a manager appointed by the commission and amenable to its control. There was a practical elimination of the overlapping of functions. For example, there was to have been a single department of finance for both city and county purposes, and a unified police system to do the work of both the sheriff and the city police.

What is thus being tried out here and there in our country is a thing

[10] *The Political Integration of Metropolitan Communities*, by Chester C. Maxey, supplement, *National Municipal Review*, August, 1922, Vol. XI, pp. 229–253.

[11] *National Municipal Review*, June, 1923, Vol. XII, pp. 310–317; also *A Bill for an Act*, etc., 26 pp., published in Butte in 1923. The principal work in drafting this act was done by Dr. A. R. Hatton, charter expert of the National Municipal League.

perfectly well known elsewhere. In France, Italy, and Germany the systems of local government are so different from ours that little is to be gained from a comparison. In England and Wales, however, the "county-borough" is almost the counterpart of the "city and county" with us. With but one set of officers, it is both a borough and a county at the same time. The number of such consolidated governments in England is already over eighty, and the number is steadily increasing with the approval of the Local Government Board (now the Ministry of Health) and of Parliament.[12] As in America, so in England, it is the county and the rural authorities which oppose the spread of the consolidation movement.

THE CITY AND THE SCHOOL DISTRICT

The promotion and control of the educational system in large cities is generally vested in an elective or appointive board. A striking exception to this rule is the city of St. Paul which intrusts the management of its schools to the city council or commission, one member of which is designated by the mayor as commissioner of education.[13] In this city education is handled as one of the ordinary branches of city administration. This is an extreme case of unification of all branches of municipal administration into one system. At the other extreme are numerous cases of complete separation, cases in which the school board or committee, elected from the school district, manages every detail of the local educational system without either aid or interference from the ordinary municipal authorities. Indeed the school district in many places is a completely separate corporation. Church and state could hardly be more clearly separated from each other than school and city governments are in many localities. Between these two extremes of complete fusion and complete separation one could probably find among American cities some examples of almost every form and degree of partial fusion or coöperation that one could desire to study.

The first problem to present itself is that of areas. There may be two or more school districts in the city, or the city may be included within a school district with a much larger area. As a general rule, however, both corporations have the same boundaries, which is by far the most convenient and desirable arrangement in the majority of cases.

We cannot come to any conclusions as to the problem of areas, how-

[12] *National Municipal Review*, July, 1918, Vol. VII, pp. 355–61.

[13] *Charter*, 1920 ed., secs. 42a, pp. 385–417; State *ex rel.* Smith *v.* City of St. Paul, (1914), 128 Minn. 82, 150 N. W. 389.

ever, without discussing at the same time the broad question of the relationships between the two corporations. In the beginning of the system of public education in seventeenth-century New England there was at first no thought of creating special districts for educational purposes. On the contrary the ordinary town governments were charged with the responsibility of appointing and paying the school masters and providing the schools. The idea of publicly supported education spread slowly until after the American congress by the Northwest Ordinance (1787) began the policy of setting aside certain public lands for the support of public schools. Thereafter in every new community in the west the public school seemed almost as necessary as public roads. But in these days before and just after the Civil War when the school system was being established, the idea of decentralization was an important political dogma. Legislators found it expedient and wise to provide special authorities for special purposes. School districts, highway districts, park districts, and many others, came into existence, each with its board or commission and its separate control of a particular function. At a time when the functions were new and required much attention, when public officers were unpaid, and the people generally were too poor and too busy to give much time to public affairs, this decentralization probably served a useful purpose.

Having once begun as independent authorities, school boards have steadily and vigorously resisted all attempts to bring them under the control of the ordinary municipal authorities. In the recent movement toward the consolidation of municipal departments, park boards, police boards, health boards, and boards of public works have in many cases been abolished, and their functions have been transferred to regular city departments. The school boards, too, have been forced to yield in some degree to the new tendency; but on the whole they retain their independence more fully and more generally than do any of the other boards mentioned above. In this struggle for independence school boards and educators have developed a series of arguments and reasons for the separation of the schools from the municipal government. It is our duty to examine these arguments as candidly as possible, to state the counter-arguments, and to come to such conclusions as the present state of our knowledge will permit.[14]

[14]See *Report* of the Special Joint Committee on Taxation and Retrenchment, New York, Retrenchment section, Legis. Doc. No. 80, Albany, 1920, pp. 29–47; W. P. Capes, *The Modern City and its Government*, Ch. XII; W. S. Deffenbaugh, *Current Practice in City School Administration*, 1917, U. S. Bureau of Education, Washington.

1. It is said in the first place that education is a state and not a municipal function. In a large majority of the state constitutions it is provided that the legislature shall establish and maintain a general and uniform system of public schools, and in every state there is to be found a considerable body of law for school organization and management. However, the argument proves too much. There is no state which has yet assumed full responsibility for its schools, no state in which the principal burden of school support and most of the power and responsibility for school management is not devolved upon the local communities. Indeed, local school boards are among those most strongly opposed to actual state control of education. Moreover, a city is just as much an agency of the state as any school district. Cities have always handled such state functions as police, health, and highways. Cities assess property, collect taxes, gather vital statistics, and support armories for the state. The only difference from this point of view between a city and a school district is that the former is an agent of the state for many purposes, whereas the latter is a state agent for but one.

2. A second argument is based upon the importance of education. It is urged that education is so important a function of local government as to require to be handled by a separate local authority. Stress is placed first upon the social importance of education, and secondly upon the size of the school budget. The latter varies from time to time and from place to place, but in small cities it frequently equals the ordinary municipal budget, whereas in larger places it makes up from 25 to 40 per cent of the total annual local expenditure. This argument is not without some merit, for if better handling of these large sums of money can be obtained from an entirely separate school authority than from one controlled by the city government, the American people should insist upon separation. It is just upon this point, however, that the people have recently had most doubts. Many school boards have failed most signally in the matter of stewardship of the public funds. A city school board which is out of debt, which avoids lavishness in school construction, and which buys its supplies with a view to strict economy, is a rarity in the land. Thus it happens that, while educational policy is still left almost entirely to the board, the power of independent financial management has in many places been taken from it. Public opinion still seems to favor a special board to discuss the important questions of the school calendar, curriculum, teaching, supervision, and text-books, but such a board can be had without making it a law unto itself in financial matters.

3. Those who have a special interest in the schools insist, however, that the schools will be better supported if independent of the city government. If the school department must present its budget estimates to some central city budget authority, the schools will have to compete against health and police, street and other departments in a general scramble for funds. This argument is based upon the thought, expressed above, that education is more important than any other city function and should always be given first consideration. There are very few persons who will deny that popular education is highly important for individual progress and the maintenance of democratic institutions. It is not, however, the first function of government. The protection of life and limb, the warding off of disease and death, and certain other functions had to be provided for before public education could be thought of. The fact that we have been and are a rich people who have been able to provide liberally for education does not alter the facts of human society. We cannot even to-day provide an unlimited amount of money for the support of government. All requests should be considered upon their merits, and that means that they should be considered relatively to one another. So determined are the American people to give adequate schooling to their children that the friends of education need have no fear of the schools not getting their fair share of the appropriations from any central budget authority that may be set up. Indeed, despite the fact that many cities have had centralized control of school finances for some years it has yet to be demonstrated that such control has been a serious handicap to the schools.

4. It is very commonly said that the schools should be kept free from municipal control in order to "keep them out of politics." The meaning is perfectly clear. Of course, in the best sense "politics" refers to the determination of public policies, but we have come to use the word as connoting patronage, spoils, and corruption. City governments have a bad reputation. Men in city politics have found ways to enrich themselves at the public expense. They have rewarded friends with offices in which salaries were paid but no work required, they have padded payrolls, they have sold cheap and defective goods to the city at high prices, they have split profits with municipal contractors, and they have not stopped short of actually looting the city's treasury. The picture is indeed a horrid one. The question arises, nevertheless, whether separate control of schools is an effective quarantine to prevent the spread of the disease to the school depart-

ment. Because the schools are the schools, and because of the great popular reverence for them, it would seem that downright corruption has been less common in school systems under all forms of organization than it has been in police and public works departments. The lower orders of politicians have seemingly feared to lay their hands as heavily upon the schools as upon other departments. At the same time the schools have not been wholly free from corruption, and there is no body of evidence to prove that separation of the schools from the city government has had much effect on the situation. There have been text-book scandals, and the appointment of obviously unfit teachers and supervisors. There has been "real estate politics" in the purchase of school sites, extravagance if not graft in contracting for school buildings, and very faulty business judgment, to say the least, in the purchasing of fuel and other supplies. School boards, in short, have not been free from "politics," but have developed methods of self-enrichment of their own. The political party which controls the city government usually controls the schools as well. Where the former is corrupt, the schools are not likely to be wholly immune under any form of organization.

5. But it is urged that power and responsibility are better concentrated if the school board is given full control of the schools in all respects. This is undoubtedly true if one considers only the schools, but it is distinctly not true if one looks at the city government as a whole. Separation is not concentration. The terms contradict each other. Upon this point it can be said that the most complete concentration of power and responsibility implies a scheme of organization similar to that provided by the St. Paul charter.

One fallacy which runs through the arguments for separation of the schools from the city government is the idea that the schools are *sui generis*, something entirely unlike anything else in the range of governmental functions. This view is without foundation in either history or reason. National, state, and local governments exist to promote the general welfare. In working to this end they provide numerous utilities and services, education being one of them, and one which came in relatively late. In aim, method, and in the means used, it is not essentially unlike other functions of government.

The view taken by the student of local government is that a city is a unity. Within the same area there is not a park city and a school city and a police city and so on. There is but one people and one group of taxpayers. As the family must consider how much it can afford to

spend for food and clothing and housing and how much for charities and church support and how much for education, so the city needs to consider as a single budget all of its necessary expenditures. Sometimes one expenditure must be reduced to leave more money for another purpose, but in the long run each object of expenditure will receive its due share of the appropriations.

But in fact the partial fusion of the school district with the city government will bring about more than a unified consideration of the budget. If properly carried out it may lead to considerable savings in overhead expenditure with the result that there will be more money available for education as such. There are certain things needed by both the city government and the school board which if purchased in common or used in common can be had at considerable savings to both. A list of these "means" of administration would include the following and certain others:

Money. Where a single finance department collects, keeps, and disburses all of the city's funds, the school board need make no separate expenditure for this purpose.

Accounts and records. In this case there can be a single accounting office, a uniform system of accounts, and a far better system of records than when the school board is wholly separate.

Men. A single civil service commission or personnel department can set the examinations and keep the records covering all clerks, janitors, and other similar employees in all branches of the city administration. School teachers and supervisors can be left to the selection of the school department itself.

Materials. A centralized purchasing department can save the schools much money in the purchasing of fuel and other standard supplies.

Legal advice. The city attorney or corporation counsel holds office for the purpose of advising city officials in matters relating to their duties. The schools scarcely need a separate attorney.

Architectural and engineering advice. School boards frequently spend a great deal of public money on architects and engineers, while the city maintains a separate staff for the same purpose.

Buildings and offices. School buildings could well be made to give a wider public service through the housing of branch libraries, through use for polling places and evening meetings, and so on.

What we have been presenting are some of the considerations which point to the desirability of linking up the schools with the other depart-

ments of the city government. Given a centralized consideration of the budget and of the bonding program,[15] a city should be able to advance all of its functions in orderly formation, which is not possible in many cities to-day. At the same time there could be numerous savings from centralized financial control, purchasing, accounting, and planning, which, taken together, might amount to a considerable sum. The central budget authority could perhaps bring about some economies and an increase of efficiency by inducing the library and the schools to coöperate in the matter of books and rooms, by inducing the schools and the parks to develop a common system of playgrounds, open the year around, under a common corps of instructors, and by bringing about coöperation between the schools and the health department in the medical and dental inspection of school children. These are thrown out merely as suggestive of much that can be done.

At the same time there is no suggestion made herein that the school board should be immediately abolished. Some day it may be possible to do that, too, but not all cities are administratively prepared for that step. Strictly educational matters still furnish a fairly wide field for the exercise of quasi-legislative power. Furthermore school boards have generally in recent years, and without compulsion of law, shown a commendable desire to select and retain qualified superintendents and supervisors. For these reasons, and because the American people are not yet prepared for more forward steps, elective city school boards should and will continue to be retained for some time. Shorn of their formerly wide financial powers, they may become somewhat less important than they have been, but if this means also that the trained superintendent is given more and more independence to do constructive work, it will not be all loss. Too many boards to-day fail to recognize the boundary lines which should separate the sphere of the popular controlling authority from that of the trained school superintendent.

PROBLEMS OF METROPOLITAN ORGANIZATION

We have called attention elsewhere to the existence of a number of so-called metropolitan districts in the United States.[16] It is not possible to give an exact definition of such a district, nor to set precise

[15] When the city, the school district, the county, and other local units have separate borrowing power, it is difficult to calculate the total gross and net debt. The resulting confusion sometimes means that cities must pay higher rates of interest.

[16] Chapter II.

limits as to size. What we have in mind is the growth of small urban communities around some central city which is itself of fairly large size. In 1920 there were twenty-nine such districts having central cities of over 200,000 population. The total population of the central cities was over twenty-two million while the adjacent urban areas within a zone extending ten miles beyond the city boundaries had over seven million people. In addition there were twenty-nine other districts having central cities of from 100,000 to 200,000 population. In these districts lived 6,698,418 people, of whom over 2,500,000 lived outside of the central cities but within the ten-mile zone. Within these fifty-eight highly urbanized areas lived in 1920 more than one-third of the American people.[17]

A close study of these districts reveals the fact that each faces the problem in some measure of metropolitan organization, and that in the larger centers such as Boston, New York, Philadelphia, Cleveland, Detroit, Chicago, and San Francisco-Oakland, the problem is becoming acute. The central city in each case is crowded into a limited area and without adequate power of control beyond its boundaries. At the same time it is burdened with the necessity of providing police and fire protection and numerous other services not only for its own inhabitants but also for the thousands or even tens and hundreds of thousands of people who live just beyond the limits but come and go each day for work and amusement. The daytime population of Boston probably greatly exceeds the census enumeration. For residence purposes the people have migrated to the suburbs where they have hoped to find less dirt and noise, more space, better neighbors, and perhaps lower taxes and living expenses. In some cases entire industries have moved to more spacious and advantageous locations outside.

At any rate the result is the growth at the very doors of the city of a number of smaller cities, both residential and industrial. For social and economic purposes the city is still one, but for politics and government it is a house divided. One city may be the harboring place for criminals who ply their law-breaking trades in another. In one municipality the regulations governing the fire-safety and sanitation of homes may be so lax as to create grave fire and health risks in the neighboring communities. Conflagrations and smallpox, bootleggers and burglars, care little for municipal boundary lines. The problems of local transportation, city planning, sanitation, police, water-supply, and many others need to be handled from the metropolitan point of

[17] Bureau of the census, *Fourteenth Census*, I, *Population, 1920*, pp. 62–75.

view. The question of how to bring this about in the face of vested local political interests and popular prejudice is a problem of considerable difficulty. We suggest in the following paragraphs a few of the possible solutions.

1. In the first place it is feasible to give the central or largest city in the area a limited power of control over adjacent areas. Practically all large cities have already been given the power to acquire land outside of their limits, by either purchase or condemnation, for safeguarding or procuring a water supply, for providing parks, or for establishing hospitals, workhouses, stone quarries, gravel pits, and other needed public facilities. Some cities are permitted or even required to spend money for the construction and maintenance of roads and bridges beyond the city limits, although the power to do this will not ordinarily be implied. There is also an increasing tendency to authorize large cities to supply their services such as water supply, sewer connections, gas, electricity, the use of libraries, access to high schools, and so forth, to neighboring municipalities at prices agreed upon or fixed by law. The smaller suburban communities are thus saved the necessity of establishing expensive local services which would duplicate the facilities of the central city in the area.

When it is proposed, however, to give the large city any powers of police over the adjacent area more serious difficulties arise. It seems to be a part of the popular theory of local self-government that every community, large or small, shall have complete control over affairs within its own limits, and that it would be undemocratic to permit a large city to dictate to its smaller neighbors upon any matter. Under this theory small suburban villages and towns could permit every sort of nuisance upon the very borders of a large city. Abbatoirs, tanneries, powder houses, disreputable road houses, and gambling dens might then be set up so close to the city's limits as to constitute a positive nuisance in the city.

As a matter of fact there is but little justification for this theory of total local independence. The English municipal corporation, the prototype of the American city, "had, in the vast majority of cases, no one area over which it exercised authority. A municipal corporation . . . was, in fact, not primarily a territorial expression." [18] It was rather "a bundle of jurisdictions over persons." It could exercise one power over one place, and another power over a different locality.

[18] Sidney and Beatrice Webb, *English Local Government: The Manor and the Borough*, I, pp. 288, 289.

Its "market, conservancy, and admiralty jurisdictions might extend for miles into adjacent counties; far up rivers and creeks, and along estuaries and seas; including wide stretches of upland and commons, scattered hamlets and fishing-ports." In the same way some of the American colonial boroughs were given "liberties," monopolies, and even jurisdictions extending far beyond their ordinary limits.[19]

This idea has never fully passed away and it is now being stressed again. Many state laws and city charters contain provisions giving cities the power to control adjacent areas for purposes of preventing nuisances and promoting the public health and safety. In some cases provisions will be found giving the city the right to disapprove of the plats of lands beyond the municipal limits in order to make them conform to the city's plan. Such provisions of law have been sustained in a number of cases, such as for example a Baltimore case involving extraterritorial quarantine regulations, a Chicago case relating to the prohibition of a packing house near the city limits, and a Minnesota case arising out of a law prohibiting saloons within a certain distance of any city which had forbidden the liquor traffic locally. Thus a city's powers can in fact be extended for certain purposes considerably beyond its own limits. It is conceivable, therefore, that a number of metropolitan problems can be solved in this way without actual change of municipal areas or authorities.[20]

2. The federation of municipalities for special purposes is another possibility. Federation implies that each of the cities concerned will continue to maintain its identity and its separate existence, but that they will voluntarily provide, under authority of law, for joint committees to handle certain common problems. Such federative movements have been carried out with considerable success in rural districts for school and highway purposes. The problem is far more difficult, however, where a single central city completely overshadows its neighbors in wealth, size, and importance. Federation under such conditions is almost impossible, for if the principle of proportional representation is carried out the large city will entirely outvote the smaller ones, whereas if that principle is violated, the large city will usually refuse to come in at all. Where there exist several cities of about equal size, however, such as Minneapolis and St. Paul, a limited application of the idea of federalism is possible.

[19] For example, Albany under the Dongan charter of 1686.

[20] H. B. Woolston, "Municipal Zones," in *National Municipal Review*, July, 1914, Vol. III, pp. 465–73.

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3. The creation of metropolitan districts for special purposes is a familiar and useful device. In this case the municipalities in the area continue to exist for all ordinary purposes, but they are deprived of control over the particular function concerned which is transferred to a new authority with power for that special purpose over the entire area involved. Chicago offers one example of this sort of arrangement in the sanitary district of Chicago, which is a separate corporation with a board of nine trustees elected at large.[21] The original purpose of this corporation was to construct a drainage canal to carry the city's sewage southwestward to the Des Plaines river, thus preventing the contamination of Lake Michigan, but it has also the power to construct docks and to develop electrical power. At the present time this district covers an area of nearly 400 square miles, within which lie the city of Chicago, five small cities, parts or all of thirty-nine villages, and certain other local units.

In the Boston metropolitan area there were at one time several distinct metropolitan authorities including a park district, a water district, and two sewer districts. These have recently been combined into one Metropolitan district which has in its greatest extension an area of over 400 square miles, and includes besides the city of Boston 13 other cities and 26 towns.[22] Unlike the sanitary district of Chicago the metropolitan district of Boston is governed by a non-elective body, a board of five commissioners appointed by the governor of the state. Its powers extend to sewerage, water supply, parks, and city planning for the entire area. All the expenses are assessed by the board upon the benefited communities.

The creation of such special metropolitan districts may be but the prelude to a more complete metropolitan unification. The advantages of such an arrangement are obvious, but there are disadvantages as well. In a sense it increases instead of decreasing the complication of local areas and authorities. It may also increase the length of the local ballot, or else lead to such denials of local self-government as exist in the Boston case.

4. More drastic than the metropolitan district plan is the consolidation of the entire area into one municipality, with the reservation to the original municipalities of certain limited "borough" powers. Such is the scheme which was provided for New York when the greater

[21] *Illinois Constitutional Convention Bulletins*, No. 11, Local Governments in Chicago and Cook County, pp. 922–25.

[22] Boston *Municipal Register*, 1922, p. 307.

city was established some twenty-five years ago. Here the main functions of government are vested in the metropolitan authority, and only very restricted powers are reserved to the subordinate districts called "boroughs." In New York these are five in number: Manhattan, The Bronx, Brooklyn, Queens, and Richmond. Each borough elects a borough president who has charge of the construction and maintenance of streets, sewers, public baths, and certain other facilities, and the enforcement of the building code. The borough presidents serve also on the Board of estimate and apportionment, which is the principal governing body of the city. Practically speaking New York is a single unified city with a very small amount of power devolved upon its local subdivisions.

5. The next step beyond the Greater New York scheme of organization is complete unification through the outright annexation of the smaller communities in the area to the central city. All powers over the entire area would then be vested in the single enlarged municipality. Where there is no provision of the state constitution to the contrary the legislature itself may by special act annex one community to another for purposes of local government. Generally speaking, however, the legislature at least goes through the forms of consulting local public opinion. In the Pittsburgh and Alleghany case, for example, the act provided for a vote over the entire area, the majority to rule. Hence although the people of Alleghany were almost all opposed to annexation, they were swallowed up by the larger vote cast upon the other side by the voters of Pittsburgh.[23] It is probably safe to say, however, that in a majority of cases the legislative acts for such purposes require a majority of the people in each municipality to approve the annexation.

The growth in size of cities has already created some interesting new problems of government. The whole theory of the desirability of local self-government is founded upon the concept of the small community. The New England town was and still is in nearly all cases small in population and small in area. A man in such a place is supposed to be able to understand the simple problems of the community and to know or know about his neighbors. The government and the people are close to each other. Hence the "beautiful system" of town government probably worked fairly well under such conditions, and may have deserved much of the praise which Jefferson and other outsiders as well as many residents of New England heaped upon it. But

[23] Hunter *v.* Pittsburgh (1907), 207 U. S. 161.

in densely peopled urban districts conditions are almost reversed. Although the local area is relatively small, mere physical proximity does not bring men close together. The population is so large and so constantly shifting, and men are so bound up in their own affairs and so limited in their associations, that one person does not know another who lives in the same block or apartment house. A man may ride past the city hall daily on his way to work but not know a single officer in it. To the voter the problems of the city government may be remote and complex.

In a word, unless constant effort is made to bring the government close to the people, the very growth of the city may make it more and more distant and strange. How many citizens of New York or Chicago know intimately some important officer of the city government? How many of them stand a chance of holding public office? One of the supposed virtues of small towns is the opportunity given to all persons to take direct part in the government. This virtue has long since been lost by large cities.

When we speak of uniting great metropolitan communities under a single consolidated government, therefore, we should be very careful to keep in mind this important political fact. Everything possible should be done to preserve a degree of local self-government in small areas and a direct contact of the people with the government. Whether this should be done by providing a form of borough organization within the greater city, or by building up neighborhood centers, or by extending to the voters the power of initiative and referendum, or by extensive political education, or by some means not yet suggested, still remains to be seen.[24]

REFERENCES

It is unfortunate that there appears to be no monograph in English covering the entire problem of the extension of municipal boundaries and the consolidation of local government areas. Anyone who can master the language will find some exceedingly useful material in Yngve Larsson's *Inkorporerings-problemet*, 2 vols., Stockholm, 1913. The *Proceedings* of the American Political Science Association for 1911, Vol. VIII, pp. 61–121, and the supplement to the *American Political Science Review* for 1914, Vol. VIII, pp. 281–91, will be found valuable. Attention should also be given to the materials cited in the footnotes to this chapter, and to the following:

Munro, *Municipal Government and Administration*, I, Ch. XXII, "The

[24] See Chapter VII on the problem of neighborhood life in cities.

Government of Metropolitan Communities," dealing primarily with London, Paris, and New York, and including a bibliography.

Chicago Bureau of Public Efficiency, *The Nineteen Local Governments in Chicago*, 32 pp., tables and charts, 2d ed. 1915; *Consolidation of Local Governments in Chicago*, 23 pp., charts, 1920 (a proposed constitutional amendment to bring about consolidation); *The Park Governments of Chicago*, 182 pp., tables and charts, 1911; and other publications of this bureau.

Multnomah County (Oregon) Tax Supervising and Conservation Commission, 1923 Annual Report, entitled *Budget Facts and Financial Statistics of Multnomah County (Portland) Oregon for 1924.*

Detroit Bureau of Governmental Research, *Public Business*, Vol. III, No. 2, September 10, 1923, "The Metropolitan Area," 11 pp.

In addition, all special studies of the governments of the larger cities are likely to bring out some important facts.

CHAPTER VI

THE CORPORATION AND ITS CHARTER

In the preceding three chapters we have been dealing with the position of the city in the American system of government, studying its relationships to the national government, to the state in which it lies, and to the county and other local governments in its immediate vicinity. Before we can proceed to a study of actual government in cities, we must give some attention also to the city as a corporation, a legal person organized under state law, endowed with certain rights and powers, and burdened with certain legal duties and responsibilities. We cannot promise that this will be an especially easy chapter, for it will deal with some of the leading principles in a highly specialized branch of the law; but we do say that a mastery of these principles is essential to an understanding of municipal government, and that it will make easier the chapters which are to follow.

THE MEANING OF INCORPORATION

When William the Conqueror unfurled his banners over England he found London already a city with a municipal if not a state life of its own. Perhaps no law defined and no man could have explained precisely what it was, yet London was a distinct entity, with its own history rooting far back into the past. It had privileges, very vague to us who are nearly a thousand years removed, but which must have been very real to Londoners of the time. Perhaps they included some power of local self-government and taxation, some special rights in commerce. These privileges it was unwise for any man to deny. Even William, for all his power as conqueror, found it well to confirm them in a writing,—a charter or *carta*. He granted no new privileges. It was enough to confirm the old. Later other English towns also received their royal charters. From these simple beginnings came the practice continued in England down to our own day of having municipal liberties written down in so-called charters, and of having these charters granted by the king. To-day the king of England is, of course, merely a figurehead. It is really Parliament which now controls English city government.

These earliest city charters were mere confirmations or grants of privileges to favored communities. In most cases, too, they were bought and paid for by promises of definite annual payments to the king. They were not true charters of incorporation. The legal idea of incorporation is an act by which a number of natural persons or human beings, are made legally into one other person, like a street railway company, which has a standing in court and yet is so distinct from its members or stockholders that it may actually be sued by them. If ten men form a corporation, some being chosen officers, when all are met together in one room in lawful meeting, there are, legally speaking, eleven persons present, for the corporation itself is there, with its own rights, privileges, and duties, and its separate if somewhat intangible existence.

Now this may be, as some judges say, a mere fiction, yet it is so useful an idea that it is to be found in the law of all civilized peoples. The Roman law had fully recognized the principle. Roman cities were *municipia* or municipal corporations. The English courts were not slow to see the need of this idea. Perhaps they first applied it to the church, for after all the church was not a mere aggregate of members but a *communitas* or *universitas*, which is to say a community with a life and property separate from that of its members. The same concept came to be applied by the judges to cities and boroughs. By the fourteenth century the importance of incorporation was fully recognized. Words indicating incorporation began to be inserted directly into city charters. Thereafter cities were not merely "chartered" but also "incorporated," by the king. In the language of the charters the city was made "one body," or "a body politic and corporate." The latter phrase is to be found to this day in many American city charters. In others some more modern term may be used, such as "municipal corporation." The term used for incorporation makes no real difference, but it makes a great deal of difference whether a community is or is not incorporated.

In one aspect, then, the modern city is a corporation, with a legal personality separate from that of its citizens. In a sense the nation as a whole is a corporation and so, too, is each state; but these differ from municipal corporations in that they are "sovereign" and may not be sued by individuals or corporations without their own consent. A municipal corporation is not sovereign but subordinate, and it may be sued by anyone and without its consent being given. When suit is filed against a city it is not the citizens who are being sued, either

jointly or separately, but the corporation of the city. Should the city lose its case and be compelled by judgment of the court to pay damages to a certain amount, the money would come out of the city treasury, in the first instance, and ultimately out of the taxpayers. The citizens, we well know, are not all taxpayers. Indeed there are some cities and villages in this country where practically all the taxes are paid by non-resident corporations and individuals who because of non-residence are not members of the local municipal corporation and have little or nothing to say about its government or policy. Thus we need to distinguish between the corporation as such, the citizens or members of the corporation, and the taxpayers.

Of course, in a social sense every populous urban community is a city. Any such community has a social and industrial life of its own whatever its political or legal status. Legally, however, a city becomes a municipal corporation only by an act of the state. This is very important. In a social sense cities may be said to exist naturally. They are the result of social, economic, and geographical forces. To many persons a city seems already to exist when a numerous people, engaged in industry and commerce, are permanently settled within a small and congested area. Such is not the case in law, however, nor is it always the case in fact. Legally no city exists unless the state has expressly incorporated the people as such. Cases where urban communities have had to wait before receiving charters from the state, and other cases where charters have been subsequently revoked, are well known to students of the law of municipal corporations.

Furthermore a single urban community may be not one single city, but divided by law into several. A good example may be found in Boston and the surrounding area. In the city proper were found 748,-060 people in 1920. But in the adjacent area, lying not over ten miles from the city, were 15 cities and 33 towns, all essentially urban, and comprising together over a million additional population. By ferry, steam railroad, elevated, subway, or surface electric line, or by automobile highway, nearly two million people are within less than an hour's ride of the Boston downtown district. One crosses town and city boundaries without knowing it. Only a few officials and old settlers know just where the lines are drawn. For all social and economic purposes Boston is a city of 1,750,000 people, but legally, politically, and governmentally, this population is divided among 49 different cities and towns. The legal boundaries, deep rooted in local history, almost never correspond with the present social and economic facts.

There are 57 other metropolitan areas in the United States, with populations varying from 127,000 to nearly 8,000,000, and with a total population of 34,000,000, with problems similar to those of the Boston area.[1]

Incorporation is important, therefore, from the point of view of making the city a legal entity, and also from that of the extent and boundaries of the area over which the city corporation is given control. The charter of incorporation determines also the scope and range of powers conferred upon the local authorities. Whether they shall be free to promote the local welfare in all respects or be hampered by strict limitations, whether they shall have extensive or very limited powers of taxation, public ownership, and ordinance making, depends almost entirely upon the city's charter. It behooves us, therefore, to look carefully into the nature of this document.

THE CHARTER OF THE CITY

Webster's dictionary defines a municipal charter as "an act of a legislative body creating a municipal . . . corporation and defining its powers and privileges"; but we shall see that in fact a charter means something more than this, and that it is not always strictly speaking an act of a legislative body. The charter of a city is the written instrument, authorized or granted by the state, by virtue of which the city is given its corporate existence, its powers, and a certain form of government. In a sense it is the written constitution of the municipality for local purposes. In law a charter includes not merely the original instrument of incorporation, but also all subsequent amendments whether they are designated as such or are embodied in general or special laws of the state.[2] It is, therefore, generally impossible to get a complete picture of the government of a city from the document printed as its "charter."

As we have already seen charters have been and are being conferred upon cities in the United States in many different ways.[3] 1. In colonial times the only city or borough charters which were granted came from the proprietors, or the royal governors acting on behalf of the king. Some cities kept these charters until long after the Revolution.

[1] See Chapter V, above, for a discussion of this problem.

[2] See for example State *ex rel.* Arosin *v.* Ehrmantraut (1895), 63 Minn. 104, 65 N. W. 251.

[3] For discussion, see Chs. III and IV, above.

2. At the time of the Revolution the charter-making power passed into the hands of the newly formed state legislatures, some of which exercised almost autocratic powers. At first they granted charters only by special legislative act. While the cities incorporated in colonial times had preserved in their archives laboriously written parchment charters signed in the governor's hand and perhaps sealed with his seal, the later group of cities found their charters printed among the state laws or preserved in the files of the secretary of state. 3. Still later came the reaction against special legislation, and then began in some states the enactment of general laws for the incorporation and government of cities. Sometimes these applied to all cities in the state or to all of a certain size, but in other cases they were made subject to local adoption. In either case cities which came under them had no special charters of their own to refer to, but could only point to general laws for their authority. There are numerous cities to-day in Pennsylvania, Ohio, Illinois, and other states, for which general laws or codes serve as substitutes for special charters. 4. Finally there are the numerous "home rule" cities in California, Minnesota, Ohio, Michigan, and elsewhere, each of which has its own document, home-made and locally adopted, and belonging exclusively to itself. Of course the city charters of the colonial period have now essentially an historical interest. Of the 287 cities which had over 25,000 population in 1920, about 50 or 17 per cent are to-day governed under special charters and special legislation, about 137 or 48 per cent are under more or less general laws or codes, and 100 or about 35 per cent either have or may have "home rule" charters.[4] There are, of course, some differences in fact and in law between these three types of incorporating acts. They are similar, however, in contents, in general purpose, and in the fact that all have been authorized if not directly granted by the state.

While charters and charter laws vary greatly in detail, any one that is complete and typical will provide for the following matters.

[4] In the nature of things these figures can be only approximate. In some cases it is almost impossible to distinguish between general and special laws. Some cities, furthermore, are governed in part under special charters, in part under special amendatory laws, and in part under general codes. Then, too, it is vague at best to say that 100 cities "have or may have home rule charters." The 22 cities of New York state having over 25,000 inhabitants each, come under this heading, yet as far as the writer knows not one has as yet adopted a complete new home rule charter. The figures do, however, show the relative decline of the legislative special charter system and the strong tendency toward home rule charters.

1. The people dwelling within certain prescribed boundaries are declared to be a body politic and corporate, with perpetual succession, the power to sue and be sued, the right to acquire, hold, and use property for municipal purposes, and the power of keeping and using a common seal.

2. A certain portion of the people, described as electors or voters, are given the power to elect certain officers of the city and to control them to some extent. At this point will be set down the rules for elections, and there may be provisions authorizing the voters to exercise the powers of initiative, referendum, and recall.

3. Provisions will also be found for the organization of the government. A council or commission will be established, and usually a mayor also. There may be provisions for other officers, including department heads, and for certain boards and commissions. The relations of these different authorities to each other will be set down more or less clearly in the charter.

4. The charter will, of course, confer certain powers of government and local service upon the city, or upon particular officers, or both. These will generally include the power to make and enforce ordinances for the health, safety, morals, and welfare of the people, power to raise and expend money, to employ and discharge officials, clerks, and workmen, to purchase supplies and to contract for services, and to provide certain public utilities, works, and services.

5. In connection with these powers will be set down, more or less in detail, the procedure which must be followed. Ordinances may be passed only in a prescribed manner, contracts may not be let or franchises granted without due formalities, taxes must be levied, local improvements ordered and elections conducted according to given procedures.

6. Finally there will be certain miscellaneous provisions and particularly those which provide a schedule for the transition of the city from the old to the new form of government.

THE POWERS OF MUNICIPAL CORPORATIONS

We are to discuss in subsequent chapters those provisions of charters which relate to the organization and procedure of the city government and to the part played by the voters in the government (numbers 2, 3, and 5, above). In this chapter we shall examine those portions of a city charter which confer powers upon the municipality or upon its

officers (numbers 1 and 4, above). It will be observed that these powers are of two distinct types, *first*, corporate powers or those which are useful and even necessary to the existence of the corporation as such, and *second*, governmental powers, to preserve the peace and promote the welfare and convenience of the local community.

As we have seen in an earlier chapter, the theory was very early established as law in this country that cities are entirely subordinate to the states in which they are situated. Under the federal constitution certain general powers were conferred upon the central government, while all powers not delegated by that instrument to the United States, nor prohibited by it to the states were "reserved to the states respectively or to the people." The power to provide for local government is a reserved power of the states. Furthermore in early days when rural members predominated in all state legislative bodies, and when the suspicion and distrust of city populations was even more pronounced than it is to-day, the tendency was against the rapid increase of the powers of local governments. Massachusetts incorporated no cities until 1822. Even Boston had to continue under a town form of government until that year. When the constitutional convention of 1820 was discussing a constitutional amendment to authorize the legislature to incorporate cities, the Reverend Edmund Foster of Littleton expressed grave fears of such corporations. He inquired "whether inhabitants of other towns going into a city would not be liable to be ensnared and entrapped by the operation of laws unknown to other parts of the Commonwealth."

When the atmosphere was so filled with distrust of cities, which even then harbored many who spoke alien tongues and had strange customs, it is not surprising that the courts, also, should very early have developed a very illiberal view of municipal powers. Indeed, in interpreting city charters they applied practically the same rule as they used to test the powers of a private corporation. A municipal corporation, they held, could exercise no powers not given it by law or charter. If the legislature had intended to give the power it would be found written down expressly in the law, or could clearly be implied from what was enacted. Any power not stated or clearly implied in the charter would be presumed not to exist.

Many years later Mr. John F. Dillon, a studious judge, after reading and comparing substantially all of the American decisions upon this subject, was able to write as follows:

"It is a general and undisputed proposition of law that a municipal

corporation possesses, and can exercise, the following powers, and no others: first, those granted in express words; second, those necessarily or fairly implied in, or incident to, the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of a power is resolved by the courts against the corporation, and the power is denied." [5]

This is well known as "Dillon's rule," or the "rule of strict construction." It has been quoted and approved by the courts of many states and by the federal supreme court. It is still a vital part of the law of the land in spite of the fact that, with the growth of the population and influence of cities, some judges hesitate to apply it rigidly.[6] Those who believe strongly in the principle of local self-government are, of course, opposed to it. They want to see the city free to do as it pleases.

Much can be said, on the other hand, in support of strict construction of charter powers. It conforms to the constitutional division of governmental powers in this country. That division is between the nation and the states, and does not recognize any inherent right of self-government in counties, towns, or cities. The federal government is already encroaching upon the states from above. If at the same time cities and other local units should be permitted to assume new functions ad libitum, without even a "by your leave" to the state authorities, the states would indeed be as one caught between the upper and the nether millstones. Even partial extinction of the state governments is not yet desirable, and may never be so. With the growth and increase of cities the state as a whole is becoming more interested in municipal affairs. In the interests of the larger and more diversified constituency which it represents, the state legislature still needs to exercise some restraining influence upon local governments. If this is so, and if the legislature meets every year or two, it is no great hardship to the cities if the court says, in particular cases, "strictly construed, your charter does not authorize this new thing which you

[5] Dillon, *Municipal Corporations*, 1st ed., sec. 55; 5th ed., I, pp. 448–451. The author has in some cases cited the first edition of Dillon, published in 1872, to show how far back the precise wording of the principle stated goes.

[6] See McBain, *American City Progress and the Law*, pp. 30–57, for a discussion of the tendency on the part of the courts to break down the rule of strict construction of city charter powers.

have attempted to do." At the most this merely transfers the question to the legislature at its next session. If it is not unconstitutional the new activity may then be authorized promptly. There need not even be serious delay.[7]

CORPORATE POWERS IN THE NARROW SENSE

We shall speak first of the corporate powers of the city, using that term in its narrow sense. When incorporated a city becomes a person in the eyes of the law, with a life, a will, and a power of action of its own. But it is not a mortal person which dies with the life of its present members. The law bestows upon it a sort of immortality, a continuous life or "perpetual succession" which is very important for its purposes. The people and the voters may come and go, councils and mayors may be voted in and out, the form of the city's government and the extent of its powers may be changed from time to time, yet its life will go steadily on. It is true that cities sometimes pass out of existence. The pages of history are strewn with the wreckage of cities destroyed. Even in our own time and country we know of mining and lumbering towns which have fallen into decay or become extinguished. It is, however, the theory of the law that a city once incorporated may live forever. It may begin to-day a great public work which it will take many years to complete, in full confidence that it will live to finish the work and to enjoy its advantages.

For its corporate and governmental purposes a city may in practically all cases acquire and hold both real and personal property. This is essentially a corporate power. Without it a city could not do its work for the betterment of its people. Where the city is given the power to do a certain thing, such as to "establish a market," the power to acquire property for this purpose will be implied. In early days definite limits were sometimes put upon a city's power to acquire this world's goods just as in the case of private corporations. It was thought dangerous to the public to permit these perpetual corporations to acquire great and valuable estates. To-day these limits are nearly all gone. We now recognize that cities exist for the public and that their estates are for the use and benefit of the entire people. Our charters now generally permit cities to acquire property not only by purchase but also by gift, condemnation, devise, and in other ways.

[7] But home rule cities which must rely upon a popular referendum for charter changes may have more difficulty. See pp. 65, 122–24.

Even in small cities to-day the inventory of property owned would run into hundreds of thousands of dollars and for large cities the figures run into millions. The properties owned range from great park and school systems down through the whole range of public buildings to such personal effects as desks and filing equipment, machinery and implements, books and paintings, hospital supplies, drugs, foods, brooms, lawn mowers, and shovels. Nothing is too great or too small, too expensive or too cheap, too rare or too common, to find some place in the city's great household.

Because it is a person, subordinate to the state and to the law, the incorporated city may sue and be sued. It has not only rights and powers but also certain compensatory duties and liabilities. It may make such contracts as are authorized in its charter or the laws, or necessary to accomplish its corporate purposes, and it may also sue or be sued upon such contracts. It has generally certain duties imposed upon it by law, such as the upkeep of streets, and for its negligence in such matters it may usually be sued by any person who has suffered through its fault. Because of this constant liability to suit, as well as because of its need of legal advice, even the pettiest cities and villages generally retain a lawyer's services, whereas our largest cities are compelled to maintain large staffs of lawyers and law clerks.

Another corporate power is that of having and using a seal. Many municipal documents are not considered complete unless appropriately sealed, but the stress upon this formality grows less and less as time goes on. It is also a corporate power to hold the official meetings and deliberations needed from time to time to transact the corporate business. The procedure in this connection will be spoken of later.

MUNICIPAL AND GOVERNMENTAL POWERS

We have now spoken briefly of the corporate powers of a city. They are among the most ancient as well as the most general of the powers of municipal corporations. They provide some of the important means by which a city accomplishes its designated tasks. A city does not exist perpetually as a corporation in order to own property, to sue and be sued, or to use a seal. It simply needs these powers to carry out important purposes. The latter may be classified, however inadequately, into three groups:

1. The carrying out of certain state laws;

2. The enactment and enforcement of ordinances distinct from the general state laws for the local peace, order, health, and welfare;

3. The provision of certain useful local public works, utilities, and services authorized but not actually required by law.

In order to accomplish these purposes, municipal corporations are generally provided with certain truly governmental powers, *i. e.*, powers of control over persons and property within the local limits. They have also been very generally endowed in recent years with the power to raise money by taxation and otherwise, and to acquire property and services by compulsion, if need be. The latter powers constitute a separate group. Although they are governmental powers, they relate distinctly to means and only indirectly to ends.

THE DUTY TO CARRY OUT STATE LAWS

The powers of municipalities in England and America at the present time are the result of a long and somewhat obscure growth. The first English cities and boroughs were chartered long before the Norman kings and their successors had established a complete, uniform legal and administrative system over the entire kingdom. On the one hand the charters showed that the kings had or claimed some powers over cities, but on the other hand they conferred, "liberties," privileges, and immunities upon the cities. Very few, indeed, were the *duties* imposed upon them. They were not required to carry out national laws. On the contrary, they bought exemption from those laws, and paid well for the privileges of having their own courts and of locking their gates in the face of the king's sheriff and taxgatherer. They made and enforced their own by-laws and developed their own local services. They lived their own lives and went their own ways, little touched at first by the slow encroachment of the growing national legal and judicial system. To the king they yielded only the required taxes and a certain amount of military aid. It was in those days that Londoners might truly declare that they would have no king over them but the mayor.

The time came, however, when all this was changed. Slowly but surely the cities began to come under the influence and control of the king's courts. Parliament, too, began to take a hand in their affairs. The courts, extending their protection to every citizen, began to check up on those cities which exceeded their powers to the detriment of the king's prerogatives and the rights of Englishmen. Later came acts of Parliament which imposed new and burdensome duties upon the

boroughs. As the powers of the central government increased, it drew more and more things under its control. The unification of England meant also centralization of governmental power. In 1835 there finally came the great act which standardized the organization and powers of all the principal English towns except London, and this act was followed by others imposing new duties upon the municipal authorities and bringing them definitely under the control of the central administration. To-day the English municipal authorities for all their freedom in some respects, are, to a greater or less degree cogs in the central government's administrative machinery. English local officials speak to-day of certain of their functions as burdensome or "onerous," or of interest to the entire nation, and others as "beneficial," or of special value to the locality. The "onerous" functions are steadily on the increase.[8]

In the United States our history has been different, of course, yet the tendency is much the same. The first cities and boroughs chartered by the colonial governors were given special privileges and liberties, not burdened with duties on behalf of the colonial government. They were small and not exceedingly important, hence the colonies as a whole suffered but little from these special privileges. Indeed, there was in America at that time very little by way of centralized administration in any colony. Decentralization of power was demanded by the economic conditions of the times. Population was too scattered, distances were too great and the roads too poor, to permit of centralization. Had the cities not been given charters of self-government, they would probably have exercised the power notwithstanding. The functions which the municipal authorities exercised were then almost wholly of local concern. The colony as a whole had little interest in the local services provided by the boroughs and cities within its boundaries. "Like the English municipal corporation," says Goodnow, "the original American municipal corporation was mainly an organization for the satisfaction of purely local needs, that is, for the management of local property and finances."[9] This condition is more or less typical of all frontier communities.

Although the charter-making power passed to the legislatures at the time of the Revolution there was little immediate change in the powers of cities. This condition was altered when the population of cities

[8] Webb, *Grants in Aid*, 1920 ed., pp. 89–94. The term "onerous" has, of course, primarily a financial significance.

[9] *Municipal Home Rule*, p. 15.

became larger and that of the states more dense. The state legislatures began to find that they had a valuable power in their control over cities. On the one hand they could give valuable privileges in city streets to favored companies, and on the other they could impose upon the cities new and "onerous" duties. The states began to be interested in services which the cities had formerly performed as privileges, and to require the latter to perform them. The state as a whole became interested in education, in police, in health and sanitation, and in many other matters which were formerly considered purely local. In a more or less mandatory form these duties have come to be imposed upon cities which were in many cases already exercising them. Some states have even introduced a certain amount of central state supervision over these functions.

THE CITY AN AGENT OF THE STATE

Each stage in the development of municipal functions and powers has left its permanent impress. In the first stage of their evolution municipal corporations were hardly distinguishable from private corporations. The early law of corporations shows no clear distinction. Later the American courts began to assert that municipal corporations have a dual capacity, "the one governmental, legislative, or public; the other, in a sense, proprietary or private." It is a "well understood fact," says a distinguished state judge, "that these corporations are of a two-fold character; the one public as regards the state at large, in so far as they are its agents in government; the other private, in so far as they are to provide the local necessities and conveniences for their own citizens." [10] This may be regarded as the prevalent American view to-day, but another has in several cases been asserted. It goes a step beyond the current theory and asserts that "they are, in every essential sense, only auxiliaries of the state for the purposes of local government,"—"mere political subdivisions of the state for the purpose of exercising a part of its powers." [11] This view would seem to deny that a city has any purely local or "private" powers. It is, therefore, contrary both to history and to present facts. Should it ever become fully established it would have the effect of reducing cities to a position similar to that of counties, which are in law mere geographical subdivisions of the state for its local purposes.

[10] Cooley, T. M., J., in People *ex rel.* Le Roy *v.* Hurlbut (1871), 24 Mich. 44; Dillon, *Municipal Corporations*, 1st ed., sec. 39; 5th ed., I, pp. 181–189.

[11] Harlan, J., in Atkin *v.* Kansas (1903), 191 U. S., 207.

DUAL CAPACITY OF SOME MUNICIPAL OFFICERS

When we speak of the growth of the public or governmental powers of cities we must keep another distinction in mind. When the state wants a thing done it finds it always safer and more certain of results to impose the duty not upon a municipal corporation as such but upon some particular officer. "You cannot indict a nation," said Edmund Burke, and it is almost equally difficult to indict a great city for its failure to carry out a state function. Such indictments were more common in the past, and are still possible in some states but their importance is distinctly on the wane. They constitute at best a clumsy and expensive method of enforcing the state's policy. At the same time the state cannot safely rely upon the private suits of individuals against the city for the enforcement of its laws.

The most efficacious means yet discovered is that of making some single officer personally responsible. Thus in the case of county officials, each one is in reality a locally selected officer of the state, responsible to the state authorities for his acts. The sheriff enforces the state's laws, the county treasurer collects, keeps, and pays out the state's funds in his county, and so on. In the same way certain designated city officials have been made, to some extent, state officers for the carrying on of state functions. Thus the mayor is in many states responsible to the governor or adjutant-general for the local unit of the state militia, the city assessor makes the assessment of property locally on behalf of the state tax authorities, and the local health officer enforces the state health laws as well as the local health ordinances. These and many other municipal officials have a dual capacity. They are at the same time officers of both the state and the city. They have a divided allegiance. Thus it is that anyone who studies city charters and state laws relative to cities quickly observes that many of the governmental duties described therein are imposed not upon the city as such but upon particular officers. The city may select and pay these officers, and even control them in many ways, yet their work is state work, their responsibility is primarily to the state.

OPTIONAL POWERS OF CITIES

Because the states are beginning to impose more and more duties upon cities we must not jump to the conclusion that there is no room for the cities to take independent action. The truth is that the optional powers and functions of cities are probably more numerous to-

day than they have ever been. Statutes and charters are thickly dotted with provisions saying that the city "may" do this or that, or "shall have the power" to perform a certain service. This usually means that the function is optional, and that the city is not liable to suit for failure to take action. If the council "may" forbid the manufacture of explosives within the city limits, it may also fail to prohibit it. If a city "may" provide a municipal auditorium, it may also neglect to do so. Such matters are left to the discretion of the appropriate municipal authorities.

It is under these optional grants of power that our cities have provided many if not most of their services to the public. No law required Seattle and Detroit to acquire and to operate the local street railway systems. No mandate from the legislature compels our cities to provide extensive park systems with playgrounds, swimming facilities, and golf courses. It is also under their optional powers that city councils have built up extensive codes of local ordinances with their detailed regulation of the sale of foods and milk, of the building of homes and tenements, of the use of the streets by public utilities, and of the conduct of individuals and their use of property generally. Indeed, in the field of local or municipal affairs cities have a very wide range of activity, a sphere of local self-government for which they are alone responsible.

THE DELEGATION OF POWERS

Everyone who studies the problems of government comes very early to realize the need of having some one definitely responsible for everything which government has to do. It is a natural human weakness to follow the line of least resistance and to shirk responsibility whenever possible. That constitution, law, or charter is best drawn, therefore, which most clearly designates the person or persons responsible for carrying out its provisions. Unfortunately it is true that municipal charters are generally not well drafted. Very few are the charters which do not contain some vagueness, some ambiguities. Consequently, in the interests of effective local government, the courts have developed certain rules of construction which supplement the charter. One of these rules is that where the charter confers a power upon the city without designating which local official shall be definitely responsible for it, the right and the duty to exercise this power belong to the council. It is responsible for everything not assigned to any one else. The council has the "residual" powers of the city. Its position

in the city government is thus made analogous to that of the legislature in the state. Unless the charter or laws provide otherwise, the act of the council is the act of the city and it alone can legally bind the corporation to a certain course of action.

By this rule someone in the city government becomes responsible for everything that legally may or must be done. Despite this fact, however, it is not at all uncommon for officials to attempt to shift to others the burdens they themselves should bear. What the council itself should do it delegates to a committee, what the mayor should do is shifted to the chief of police or some other official. Actually this probably happens many times in the average large city, but the courts of law always frown upon it. "The principle is a plain one," says Dillon, "that the public powers or trusts devolved by law or charter upon the council or governing body, to be exercised by it when and in such manner as it shall judge best, cannot be delegated to others." [12] The reason for this rule is simply the need of keeping the responsibility where the law has placed it. The city's council and officers are not above the law but subordinate to it. They cannot legally shift to others the making of decisions which the law says they must make. The law stands above them all, pointing with accusing finger, and saying as Nathan said to David, "Thou art the man."

THE EXCEPTION AS TO MINISTERIAL FUNCTIONS

To this rule against the delegation of powers the courts admit one general exception. Every important act of government, if carefully examined, is found to consist of a series of steps. Let us take the paving of a street as typical of many municipal acts. If we go back to its beginning we find that, with the growth of population, travel along the street in question becomes heavier than an unpaved street can bear. In wet weather there are great holes and ruts; in dry weather the dirt is ground into dust. A public opinion begins to form that the street needs paving. In different ways this opinion is conveyed to and impressed upon the city council, which we assume to be the proper authority. Finally this body decides to consider the question. It finds that the need for pavement is great, but that the paving funds for this year have been exhausted. Delay occurs, but with the beginning of a new fiscal year a resolution is introduced to pave the street. The matter is referred to a committee which discusses all phases of the mat-

[12] *Municipal Corporations*, 1st ed., sec. 60; 5th ed., I, p. 460.

ter,—how much of the cost shall be contributed by the city and how much by the benefited property, the type of paving to be used, the length of street to be paved, the approximate time when the work shall be done, and possibly whether it is to be done by contract or by the city's own labor force. The committee then reports back its recommendations to the council which, after debate, passes the street paving project in the form (usually) of a resolution ordering the work to be done as planned. Everything that has been done up to this time has involved the exercise of judgment or discretion. It has all been within the power of the council to do, and it would have been unlawful for it to have delegated its *discretionary* power in this matter to any one else. What remains to be done is to lay the pavement in the most workmanlike manner possible. This work is almost purely *ministerial*, involving little or no discretion. At the same time it is work of a sort which the council is not fitted to do. By exception to the general rule, then, this actually ministerial portion of the task may be delegated to others. The difficult question for the courts to decide is where the line between discretionary and ministerial functions is to be drawn in each case.[13]

THE LANGUAGE OF THE GRANT OF POWERS

There is a marked distinction between state constitutions and municipal charters in the matter of form. With one exception (Alabama) the state constitutions do not contain any attempted enumerations of the powers of the legislature to enact laws. Such attempts would be either futile or unwisely restrictive. At the head of our governmental system stands the national or central government which is empowered to enact laws of general utility upon a series of subjects which are definitely named in the constitution, while under the terms of Amendment X, all powers of government "not delegated to the United States by this constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." This amendment was, perhaps, unnecessary, but it at least served to put into writing the theory of the whole constitution, namely, that the central government has certain enumerated powers and that the states and the people reserve all others to themselves.

Below the states stand the incorporated municipalities and other

[13] Compare, for example, the facts and the decisions in the two following cases: Jewell Belting Co. *v.* Village of Bertha (1903), 91 Minn. 9, 97 N. W. 424; and City of Biddeford *v.* Yates (1908), 104 Maine 506, 72 Atl. 335, 15 Ann. Cas. 1091.

local units, whose powers are derived entirely from the states in which they are situated. In order to prevent these local units from doing things which the states wish to reserve for themselves, it is necessary to enumerate or at least to describe with care the powers which they may exercise. From this point of view our system of government may be charted as follows:

1. The United States, acting through the national government.
   Powers for the most part enumerated in the constitution.
   These powers actually are somewhat elastic under the rule of implied powers.

2. The 48 states, acting through their separate governments.
   Have *all the reserved powers of government*, not enumerated; but may not transgress the federal constitution which gives some powers to national government, and denies some to states.
   The several state legislatures are, of course, also restrained by certain prohibitions, etc., in the respective state constitutions, but this is not true of the states themselves.

3. The numerous cities, counties, and other local units.
   These units have only such powers as are conferred upon them by their charters or other legislative acts; *i. e.*, *have enumerated powers*, with certain exceptions to be noted later.
   They are restrained from expanding these powers by the usual strict construction attitude of the courts.

The form of the grant of powers contained in a city's charter is a matter of considerable importance. Most American city charters are founded upon the idea that every power should be very explicitly stated. In the period since the Civil War, due to the rapid growth of cities and to their constantly increasing needs, city charters have tended to grow longer and more detailed. Such charters usually begin with a brief statement of the corporate powers (to sue and be sued, etc). Further along in the charter will be found a long enumeration of the ordinance powers of the council, and at various places throughout the rest of the document will be found explicit statements referring to financial powers, and powers to construct public works and to manage particular departments. It is not unusual to find the council's ordinance powers enumerated under from seventy-five to one hundred or even more headings. There are certain advantages to this form of charter, chief of which is the definiteness of the powers actually written down. If the desired power is actually expressed in the charter, the council or other local authority may proceed to act upon it without fear of exceeding its authority.

In recent years it has appeared that there are disadvantages inherent in the attempt to express every power in the charter. The problems requiring public solution have multiplied so rapidly in our cities of late, that enumerated powers are always likely to prove inadequate. In states which authorize municipal home rule cities have frequently been put to the expense and trouble of adopting charter amendments to authorize new things to be done. In other states city officials have been compelled to repair to the legislature time and time again for a loosening here and there of the legislative straight jacket in which they were encased. Where the legislature has complete control over charters it has found this system to its liking, since it has been able to restrain cities from going ahead too rapidly and in undesirable directions. The cities, on the contrary, object to this method as violating the principle of home rule and as unduly increasing their growing pains. Another objection to long and complicated charters has been that they not only prevented certain things from being done at all, but also contained restrictions as to forms of procedure which compelled cities to follow old methods long after better ones had been discovered. The simple fact is that no generation has all the wisdom and knowledge needed for guiding the destinies of the next. Local charters need elasticity. There must be room for growth and experimentation.

In recent years a number of cities, particularly in home rule states, have adopted charters which are much shorter and simpler than those discussed above. A significant feature of some of these charters has been the attempt to cast the grant of municipal powers into one single, broad statement. These statements have assumed several distinct forms. The Cleveland home rule charter of 1913 is typical of a group of charters which briefly describe the city's powers without attempting to enumerate them.[14] It is significant that Cleveland adopted a new charter in 1921 embodying a complete change in the form of the city government without finding it necessary to modify this grant of powers. A few other charters go in the direction of conferring upon the city "all municipal power" of every kind in a single phrase or sentence, without enumeration or description of any kind, although no city appears as yet to have gone to the extreme in this matter. The unusually brief Cincinnati charter of 1917 provides that:

"The city shall have all powers of local self-government and home rule and all other powers possible for a city to have under the constitution of the state of Ohio." [15] This statement is somewhat misleading,

[14] Sec. 1.

[15] Sec. 1.

however, since Cincinnati is really under the state municipal code and its council is probably limited to exercising the powers granted therein.

Several municipal charters in Michigan contain language similar to that in the Kalamazoo charter which provides that the city "shall have and may exercise all powers which now are or hereafter may be conferred upon, or reserved to cities under the constitution and laws of the state as fully and completely as though said powers were specifically enumerated herein."[16]

The city of Duluth, in its charter adopted in 1912 provided perhaps the most sweeping grant of powers to be found among American city charters.

"By and in its corporate name, it shall have perpetual succession; and save as herein otherwise provided and save as prohibited by the constitution or statutes of the state of Minnesota, it shall have and exercise all powers, functions, rights and privileges possessed by the city of Duluth prior to the adoption of this charter; also all powers, functions, rights and privileges now or hereafter given or granted to municipal corporations of the first class having 'home rule charters' by the constitution and laws of the state of Minnesota; also all powers, functions, rights and privileges usually exercised by, or which are incidental to, or inhere in, municipal corporations of like power and degree; also all municipal power, functions, rights, privileges and immunities of every name and nature whatsoever; and in addition, it shall have all the powers, and be subject to the restrictions contained in this charter." [17]

It is not to be supposed that a charter which includes a sweeping grant or claim of "all municipal power" contains no other provisions relative to the subject-matter. Far from it; our charter makers have not been able to restrain their pens to this extent. Some charters, after claiming for the city "all municipal power" or all power of local self-government tend to go into detailed enumerations. Others give the detailed statement first and follow this up with a grant of all other powers which might have been mentioned, which naturally raises a question as to the value of the preceding enumeration.[18] In every charter there are, also, numerous provisions as to the powers of particular officers, but these relate rather to the apportionment of powers among the official personnel than to the extent of the powers.

The movement in the direction of simple, brief, and sweeping grants

[16] Charter of 1918, sec. 1.

[17] Charter of 1913, sec. 1.

[18] See Chapter XV on the meaning of so-called "general welfare" clauses.

of powers to cities is in the main highly beneficial. It saves the charters from becoming needlessly wordy. It will in the long run, if such clauses are fully sustained and liberally construed, enable cities to proceed to the solution of their municipal problems without being hampered by complicated restrictive clauses.[19] Up to the present, however, the results are not distinctively different from those obtained under the older system of granting powers. Municipal councils and officials are more often guilty of timidity than of being overbold. They desire to have clear and specific rather than vague and general authority before going ahead with new projects.

The attempt to confer powers on cities in such broad phrases as "all municipal power" is also having another effect. Formerly when a question went to the courts as to whether a city had a particular power the court merely looked into the charter and laws to ascertain whether the particular thing was authorized. Now the court is frequently called upon to answer the question, Is it a municipal power? The result is the beginning in this country of a clear attempt to set off municipal powers on one side from state powers on the other by a sharp legal line. This may result in restricting cities in some cases to a narrower range of functions than they formerly possessed. It is interesting to note that the movement to confer powers in this new way is confined almost entirely to the cities in states which authorize municipal home rule.

THE CITY'S LIABILITY FOR TORTS

It is generally recognized that in the organization of a government every grant of powers should be balanced by a corresponding responsibility. An irresponsible power is simply unthinkable. In the historical struggle for human liberty kings have usually had to choose between becoming responsible and innocuous and being removed entirely. In the realm of law, justice has demanded the enforcement of a similar principle. Rights and privileges are generally linked up with duties. The law recognizes property rights, but those who have such rights are in duty bound so to use their property as not to injure others. A partnership contract creates rights and corresponding duties at the same time.

The responsibility of high political officers such as the president and

[19] For two cases where the state supreme court took a liberal attitude toward the Duluth grant of powers, see Park *v.* City of Duluth (1916), 134 Minn. 296, 159 N. W. 627; State *ex rel.* Zien *v.* City of Duluth (1916), 134 Minn. 355, 159 N. W. 792.

state governors can generally be enforced only at the polls, although impeachment is a possibility. As to less important officers the law is more definite. For dishonesty in office, such as embezzlement or bribe-taking, there is usually provided some form of criminal prosecution followed by imprisonment or fine or both. We can easily think of other ways in which individual officers of the government may be disciplined if they abuse or fail to use their powers. But how can the municipal corporation as such, distinct from its officers, be held to accountability? Suppose the entire city government is negligent in the performance of its duties in such a way as to cause another person an injury. Or suppose that some poor employee or officer of the city causes the injury to another while performing his duties. In the one case it might be very hard to find the person who was directly responsible. In the other it would probably be impossible to recover anything from the responsible employee or official due to his own poverty, and it would be entirely useless to send him to jail or even to dismiss him from the city's service. In such a case should not the city itself be punishable, or at least be made to pay damages to the person injured?

Attempts to indict the city, even if successful, could only result in a fine to be paid into the county or state treasury. It would be impossible to punish the entire city by imprisonment or otherwise, though individual officers or citizens might be so punished. For all ordinary wrongs or "torts" the most efficacious remedy seems to be that of the private suit by the injured party to compel the city to pay him money damages. This saves the state as such the expenses of litigation against the city and also serves to give compensation to the person who has innocently suffered from the city's negligence. The national and state governments may not be sued by individuals without their own consent. In some cases this consent has been grudgingly given, in others not given at all. Cities on the other hand, are subject to suit at any time by any aggrieved person. They can be compelled to appear in the courts to defend themselves and judgments may be entered against them.

They are not liable for their every misdeed or negligence, however. The law upon this subject has been developed in the light of public policy, and all who give consideration to the matter will agree that to hold the city liable for negligence in certain cases would be an entirely unsound principle. It would be absurd to require a city to pay all fire losses occurring within its limits. Instead of decreasing these losses, this policy might well result in an increase of arson,—and the early

bankruptcy of the city. Much the same might be said of losses resulting from burglary and robbery, and deaths resulting from imperfect enforcement of the health laws. The law does not generally require the impossible of any one, nor does it guarantee any one a perfectly safe society in which to live. In the long years during which the law of municipal corporations has been developing here and in England, many able judges have given serious consideration to the problem of the city's liability for torts. If the rules which have been evolved do not allow the giving of damages in every case where innocent persons have suffered, they at least are based upon common sense and are almost entirely practical.

Whether the city is liable or not for a particular tort depends primarily upon the nature of the function and power involved. Roughly speaking municipal powers are of two classes, as mentioned before, namely (1) governmental or public, and (2) private or proprietary. The courts have never succeeded in giving exact definitions of these two categories. It is perhaps impossible to do so. The judges and text writers do, however, agree quite generally that certain functions belong in one group and that certain others constitute the other. We may name some of them here for convenience of discussion. For reasons to be noted later the governmental functions are subdivided into two groups.

Governmental or Public Functions		*"Private" Functions*
A.	B.	
Police protection	Streets, bridges, viaducts	Water supply
Fire protection	Sidewalks	Electricity and gas supply
Health protection	Sewers	Markets, wharves, etc.
Education		Street railways, etc.
Building inspection		
Regulation of business, theatres, etc.		
Parks and playgrounds		
City hall		
Charities and corrections		
City jail		

One other point must be noted first, however. It has been said above that the carrying out of every function of government is a process

involving a series of distinct steps. First come the various discretionary steps, the decision to do a certain thing and in a certain way. Next come the purely ministerial acts which involve substantially no discretion or judgment. It is a generally accepted proposition of law that neither the city itself nor its council nor any of its officers is responsible for the honest exercise of a discretionary power. A city with the power to prohibit the manufacture of explosives within the city limits, may forbid this industry or not as it sees fit. If it fails to forbid, and a serious explosion occurs causing much injury to private property, the city is not liable in damages.[20] Thus, also, it may accept a certain street or not, build a bridge or decline to build one, provide a public market or fail to do so, in its discretion, without incurring any liability in either case for reaching the decision which it did. In the same way the mayor may, if it lies within his province, in the exercise of his own honest judgment, revoke a theater or billiard room license, without liability. This rule holds true whether the function to be performed is a governmental or a "private" one.

In general it may be said that a city's liability for tort arises only in the case of ministerial acts, or those which involve little or no discretion. The question whether the city is liable even for ministerial acts depends then on the nature of the function, according to the classification made above. The general rule is that the city is not liable for the improper or negligent exercise of governmental functions. This rule is applied with substantial unanimity by all American courts as to the governmental functions in the first list (A). These functions have come to be accepted in America as being truly governmental. They are supported almost entirely by taxation and are supplied to practically all inhabitants without specific charge. They are of such a nature that, if there were no city governments, they would probably be supplied directly by the state. Even the fact that small fees are charged in connection with some of them does not change their essential character. Hence though one be attacked by a drunken policeman, or injured by the fire department, or not given adequate protection against smallpox in the city's schools or hospitals, the city as such is not liable. There may be grounds for suit against the policeman, or fireman, or health or school officials, personally, but there is no ground for suit against the city corporation.[21]

[20] McDade *v.* City of Chester (1888), 117 Pa. St. 414.

[21] See the cases in Beale, *A Selection of Cases on Municipal Corporations*, pp. 569–601, and in Cooley, *Illustrative Cases on Municipal Corporations*, pp. 275–281.

To this rule there is an important exception. The great majority of the American courts have put the second group of governmental functions (B, above) under a separate rule. It is indeed a governmental function to provide streets, bridges, sidewalks, and sewers. They are supported out of taxation and supplied without specific charge just as in the case of police and fire protection. Nevertheless the majority of the American courts have held that for improper maintenance of such works the city will be liable. When a city provides a street or sidewalk it assumes an obligation to the traveling public to keep it in safe condition.

The city must exercise reasonable care and diligence. The unreasonable is not expected. If an unusually heavy rainstorm washes out a part of a sidewalk, or a tornado fills the street with debris, the city must be given a reasonable time in which to correct the defect or to remove the obstruction, or at least to fence it off and to put up warning notices and lights. The courts do not attempt to require the impossible, but only what is feasible. They believe that to hold the city to liability in cases of negligence tends to promote efficiency. The fear of expensive lawsuits may spur city authorities to keep the streets and sidewalks safe and sewers from getting clogged up, but it would hardly be just and certainly could not promote efficiency to punish the city for an injury which it could not possibly have prevented.

In a dozen states, however, the courts have held cities not liable for negligent maintenance of highways and drains unless they are made so by act of the legislature. This emphasizes the fact that what we are here discussing is a portion of the ordinary common law, and not constitutional law. Each state has its own common law, which may be changed by ordinary statute. Six of the twelve states here mentioned are in New England; the other six are scattered from New Jersey to California. Some of them have by statute already made cities liable for the maintenance of streets in a reasonably safe condition. Indeed it is worth noting that the legislature's control over cities is so complete that it may make them liable even for failure to perform properly their other governmental functions. In a number of states cities have been made liable for property damages caused by mobs and riots.[22]

A question which has puzzled the courts not a little is that of the city's liability in case the injury to a traveler is due not to negligent

[22] See for example the *Wisconsin Law for Cities, 1921*, sec. 66.07, and Darlington *v.* Mayor, etc., of New York (1865), 31 N. Y. 164.

maintenance but to faulty planning and construction. Where the ground is level has the city the right to leave steps or irregularities at unexpected places in a sidewalk? Or could the city, to take an extreme case, authorize the construction of a board sidewalk in which spaces six inches wide were left between the boards? In general the courts incline to hold that such structural defects are on a par with defects due to faulty maintenance, but the decisions are not at all unanimous. To hold the city liable in such cases is not the same as holding it liable for the exercise of its discretion. A sidewalk or pavement implies an even and continuous surface. To provide anything else is not to exercise discretion but to make an arbitrary decision as to what is really a ministerial affair.[23]

There are, finally, the functions referred to above as "private." They are essentially business undertakings. Though they may constitutionally be supported by taxation, they are actually supported in most cases out of the rates or fares paid by the users of the service. They are businesses of a type frequently engaged in for profit by private corporations. As to them the courts generally hold the city to the same liability as private corporations. The rule is that the superior or employer, the municipal corporation in this case, must "respond in damages" for injuries caused by the negligence of the employees who are actually carrying on the enterprise. Hence if a city owns the electric light plant, and its workmen hang wires so carelessly that they fall, causing an injury to someone, the city is liable. If the city-owned market is jerry-built, and a wall or partition falls upon and injures a person present on lawful business, the city can be compelled to pay damages.

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[23] Excellent illustrations may be found in Cooley's *Cases*, cited above, pp. 290–93, 296–98, and in Macy, *A Selection of Cases on Municipal or Public Corporations*, pp. 396–401.

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CHAPTER VII

THE PEOPLE IN OUR CITIES

In an earlier chapter we spoke of cities in terms of size and of the numbers of their people. Those facts are of great importance, and yet, while we may number people as the chronicler did the flocks and the herds of Job, it is necessary also to look more closely into their lives and circumstances if we would know the stuff of which the city is really made. The politics and government of any community arise quite directly out of the lives and characters, the social and economic conditions, of the people of which it is composed.

RACIAL PROBLEMS

Next to the whites in number in American cities, stand the people of negro blood. In the country as a whole in 1920, negroes numbered 10,463,131, or just less than ten per cent of the whole population.[1] In the north and in the far west, however, negroes are relatively few in number; nearly nine million of this race are to be found in the southern and southwestern states. It is especially in the cities of the south, therefore, that we find the negroes congregated. In a few far southern cities they number from thirty to forty per cent of the total population; a little farther north the percentages become smaller, varying along the Mason and Dixon line from eight to about twenty per cent. In Washington, D. C., for special reasons, twenty-five per cent of the population is negro. In northern and western cities the percentage of negroes is low, varying from less than one to about ten per cent, with an average of less than three. It should be noted, however, that in 1910 these percentages were lower in the north and higher in the south. In the decade 1910–20, when war and stricter immigration laws cut off the usual supplies of European labor, there was a considerable northward migration of negroes, who went especially into the northern industrial centers. It is not surprising, therefore, that in this decade

[1] The principal statistics used throughout this chapter will be found in the publications of the Bureau of the Census reporting the Fourteenth Census, 1920, and particularly in Volume III on Population devoted to the *Composition and Characteristics of the Population.*

the percentage of negroes in northern cities generally increased, while in the southern cities there was a corresponding decrease in the proportion of negroes in the population. The 1920 census figures show that our cities of 100,000 population and over have a combined negro and foreign-born white population ranging from approximately sixteen to forty-three per cent of the total, and that where the percentage of negroes is relatively small, that of foreign-born whites is relatively high, and vice versa. No city has either a very high or a very low percentage of both.

In the cities of the Pacific coast the presence of some thousands of Japanese and Chinese introduces still another racial group into the situation. Their numbers are nowhere large as yet; in percentages they range from a little over one to about three per cent of the total.

The problems created by the existence of these distinct racial groups in cities are easy to state but difficult to evaluate. Among these are important and persistent police problems. Attempts are made to segregate the children in the schools. Where the minority racial group is large it is frequently prevented from participating in political affairs, whereas in places where it is small its political activity is tolerated. The influence of negroes in municipal politics is greater in some northern cities where their numbers are small than in some southern cities where their numbers are large. The fact of racial antipathies and prejudices may not of course be overlooked. It leads to race riots in some cases, and nearly always results in the more or less compulsory segregation of the minority racial group into distinct residence districts which are often of an inferior type.

THE FOREIGN BORN IN AMERICAN CITIES

Taken as a whole, the dominant people in the United States is not indigenous to this soil, but is made up of immigrants and the descendants of immigrants who have come to this land through an historical period of three centuries and a little more. In the main these people have come from Europe, but many also have come from Africa, and some from Asia and the islands of the Pacific. Some can claim to have been here longer than others; some can point to a number of generations of American forbears; but none except the Indians can claim to have an American lineage reaching back into an indefinite past. From early colonial days there have been groups of so-called "for-

eigners" in our American cities. Isolated from their neighbors because they spoke different languages, or conformed to different religious and social customs, or owned less property than those who had preceded them to these shores, they were compelled to struggle for a generation or more until they secured that standing in the local society from which they could in turn look down upon the latest comers. Even in 1821 some men feared the destructive influence of these "foreigners" upon our institutions just as other men did a century later. The Irish, the Germans, the Scandinavians, have all in their time passed through the same process of assimilation as other and more recently arrived nationalities are now going through.

In current discussions of the immigration problem, it is a truism that recent immigrants have come largely from the countries of southern and eastern Europe, whereas those of earlier days came mainly from northern and western Europe. Italy, Russia, Poland, the states of old Austria-Hungary, and the Balkans, have been the native homes of most of our recent immigrants. They came to America after the free or cheap lands of the west were practically gone, after the country had become highly industrialized. They came in response to the call for railroad and construction laborers, miners, steel-workers, packing-house employees, textile and rubber-plant operatives. They came, therefore, to the cities, not to the farms, not only because their work was in the cities, but because there they found people who spoke their languages and understood their ways. By 1910, while but 14.5 per cent of the American people as a whole was foreign born, of the urban population 22.6 per cent had been born outside of the country. In that year, over 40 per cent of the people of the city of New York and of several New England factory cities, were found to be foreign born. Many other cities had over 30 per cent foreign-born residents; so that by adding the number of native-born persons who had foreign-born parents to the total, one could easily make it appear that our cities were undergoing an inundation of foreigners. It was at about this time in our history that so much was heard of the theory that the faults of city government were to be attributed in large part to the "ignorant foreign vote."

In the decade 1910–20, the tide of immigration began to ebb. The business depression of 1913 had some effect, but the war in Europe, which began in 1914, was chiefly instrumental in cutting off some of our foreign supplies of immigrant labor. Some foreigners who were already in America returned to their native countries out of patriotic

motives to participate in the war. Then came the passage of the law applying the literacy test to incoming foreigners, and just at the end of the period the so-called three-per cent limitation law. The net result, as shown by the census of 1920, was a reduction in the percentage of foreign-born persons both in the country as a whole and in the cities. The percentage in the entire nation dropped from 14.5 to 13 per cent; in urban districts the proportion fell from 22.6 to 19.1 per cent. New Bedford was the only large city which in 1920 had over 40 per cent of foreign born in its population (40.2); in the city of New York, which stood next, the proportion had dropped from 40.4 per cent to 35.4. A number of cities showed not only relative but absolute decreases in the number of their foreign-born inhabitants. It does not follow from this that there may not be other increases in the future, yet it is clear that if the national government continues its present restrictive policy, the problem of assimilating the foreign born will at least be kept within reasonable bounds.

When we survey the cities of the country section by section, we soon observe that not all cities have "the foreign problem" in the same proportions. Most of the large cities of New England have over 30 per cent foreign born, Springfield, Massachusetts, which has only 24.1 per cent being an exception. The distinctly industrial cities of New York, New Jersey, Pennsylvania, northern Ohio, and Michigan, and the cities of Chicago, Milwaukee, St. Paul, and Minneapolis, all have a foreign-born population of over 20 per cent, while a few have over 30 per cent. The cities a little farther south, however, such as Baltimore, Cincinnati, Columbus, Dayton, Des Moines, Indianapolis, the two Kansas Cities, Louisville, Omaha, St. Louis, and Washington, D. C., have populations of which the foreign-born element ranges from about 5 to about 20 per cent. In the south and the southwest the percentages are generally small. In the mountain states and the far west they average about 20, varying from 27.7 in San Francisco to 14.7 in Denver. Here again we may observe that in the cities of the far and middle south where negro labor is plentiful, there has not arisen any great "problem of the foreign born."

This problem is both industrial and political. On the one hand we see the great majority of the foreign born handicapped by lack of both education and financial resources, but well endowed with brawn and a willingness to work, forced by their circumstances to find labor at first in the great industries where unskilled labor is in great demand: construction work, mining, the steel and packing plants, etc. These,

it happens, are the very industries in which the relations of capital and labor have become badly strained in recent years. Dependent upon these "basic" industries for their livelihood, the foreign born find themselves frequently out of work. This leads to discontent, unionization, strikes, and all the concomitants of industrial warfare. In their political activities, therefore, the foreign born are often set down by those who do not have to live their lives as "radical." There is nothing new or surprising in this radicalism. Some of the earliest records of the political life not only of American cities but of cities in other countries as well, picture the struggles between the more well-to-do "old settlers" and the poorer class of incoming laborers.[2] In American cities to-day this same conflict can be found taking various forms, and almost everywhere it is complicated by the existence of a foreign language press, and a close affiliation between the petty political bosses of the foreign born themselves and the big bosses of the different party organizations.

It is incorrect, however, to speak of the "foreign-born vote" as if people voted as a unit merely because they happen to have been born outside of the United States. Perhaps these people have certain interests in common as long as they are politically unenfranchised, but usually they become potential voters as soon as they have become naturalized, and thereafter they divide among themselves on very much the same lines as other voters. Many of the foreign born are English speaking. Immediately upon their arrival, most persons born in Canada, Scotland, England, and Wales, adapt themselves so quickly to the new environment as to be very soon indistinguishable from Americans of older stock. Politically they do not constitute a separate and clear-cut group. The same is not true of the Irish, however, and it is especially not true of the Irish who adhere to the Roman Catholic church. Antagonized because of their religion, treated as more distinctly alien than other English-speaking aliens, and perhaps for more subtle causes arising out of their national history and psychology, the Irish Catholics have almost everywhere come to constitute a distinct group in politics, a group which is usually affiliated with the Democratic party. Characterized by generosity, friendliness, quick sympathies, a keen sense of personal and group loyalty, and a little of the gambling instinct and love of combat, many of the Irish have developed into natural leaders in the game of politics as it has been played in American cities and as it is still played in many. Their influence and

[2] See, for example, Levermore, *The Republic of New Haven*, pp. 228 ff.

leadership have been particularly notable in Boston, Chicago, New York, Philadelphia, and San Francisco.

Russian, Polish, and German Jews are numerous in New York, Boston, Chicago, Cincinnati, and other cities. To most Americans they are likely to appear as one group especially because of their faith. Handicapped at first by ignorance of the English language, they have usually forged ahead rapidly in business. Many individual Jews have also played important parts in local politics, but as a group they have undoubtedly given less attention to politics than the Irish. It is exceedingly difficult, however, to generalize as to their political activities. Very clearly there is no such thing as "the Jewish vote," despite all that is said about it. In economic status the Jews range all the way from capitalist and merchant prince down through the professions to the humblest rag-picker or cobbler. The world-wide prejudice against them has not been shared by the group of shrewd political bosses who help the American people to run their government. These men realize that a vote is a vote, whether cast by Jew or Gentile, Catholic or Protestant. Sought after by all parties, Jewish voters are to be found in all; yet it is more than a mild suspicion that the party yoke is irksome to them and a thing which they quickly discard at the dictates of reason or interest. Indeed, it is not unsafe to say that the Jewish voter, as much as any other, is guided by his own judgment in things political. This results in a tendency to political independence, sharp differences among the Jews themselves upon public questions, and a consequent reduction of the effectiveness of the Jews as a political group. Because "the Jewish vote" as a separate thing does not exist, it cannot be delivered. Because he cannot deliver the votes, the Jewish political leader does not get the rewards which fall to the lot of the leaders of other foreign-born groups.

In some of our large cities there are thousands upon thousands of persons born in Poland and other lands of eastern Europe who are not Jews. There is little present evidence as to the distinctive characteristics of their political activity, which leads to the surmise that up to the present they have not been here long enough, or have not been either very active or very united in political matters. The same cannot be said for the people of Italian birth, who constitute a large and measurably compact group in a number of cities where they act politically under their own leaders. It is well known that Tammany Hall, the Democratic organization of New York, has found it wise to recognize the Italian vote and the Italian leaders.

Political leaders used to speak at one time, also, of "the German vote." Considerable groups of voters of German birth are to be found in New York, Chicago, St. Louis, Milwaukee, Buffalo, Cincinnati, and other cities, while smaller groups exist in almost every city in the country. It should be remembered that this is, on the whole, a somewhat older stock in America than some of the groups which have just been discussed. Its influence as a group, in so far as it existed, was in the past. There is little evidence of its existence as a separate group politically to-day in most cities, although it is still important in some places. The German born have quite generally been characterized by a love of personal liberty and a good life. They have resented such interferences with their personal conduct as are exemplified in prohibition ordinances, and in the old days they stood united against such measures. In the main, they have affiliated with the Republican party, to which they have contributed a number of able local leaders.

Of the Scandinavians we can say not only that they have been assimilated rapidly, but that they have entered actively into local politics wherever they are at all numerous. They are, of course, not a distinct political group, since they are divided among three different nationalities as well as among different churches and economic groups. As individuals, however, they have taken their part, and there are places in which they have developed a distinct political leadership.

We might go on to speak of the French Canadians in the New England factory towns, and of other nationalities, but enough has been shown to indicate the difficulty of generalizing about the foreign born in municipal politics. The point is simply that sweeping statements upon this subject in the present state of our knowledge only betray ignorance. While it is perhaps true that most of the foreign born in our cities have no traditional knowledge of nor respect for our institutions of local government, and possibly have some difficulty in understanding our individualistic fear of municipal ownership of public utilities, it cannot be asserted truthfully either that the foreign-born voters are all "radicals" or that they are all corruptible. To know them we must delve into problems of national psychology, of history, of local environment, of local leadership, and of many other kinds. Upon careful analysis we should perhaps find that the German-born voters in Chicago are different from those in Cincinnati, and that voters of one nationality reacted in one place as voters of another nationality reacted in another place or time. Social scientists have not yet made sufficient researches to tell us all we need to know. The

only real student of questions of this type is the local political boss, and with him the matter is a trade secret of purely local and personal utility. He is not particularly interested in the advancement of the cause of political science.

CITIZENSHIP OF THE FOREIGN BORN

We cannot reach any conclusions concerning the political influence and activity of the foreign born without giving some attention to the question of naturalization. In practically all states to-day it is necessary to be first a citizen before one becomes a legal voter. All persons born in the United States and subject to the jurisdiction thereof are citizens of the land by birth. Persons born abroad of American parents are also considered citizens, but for the greater number of the foreign born there is practically but one way to acquire American citizenship and that is by the process of voluntary naturalization. It is well known that great frauds were once practiced in large cities in the hasty naturalization of large groups of aliens just before elections, but there is reason to believe that this malpractice has largely ceased. To-day a period of ninety days must elapse between the receipt of final papers and the exercise of the elective franchise. In fact, so far have we come from the days of the old naturalization frauds that to-day many persons interested in Americanization work have a feeling that aliens do not naturalize rapidly enough.

The point to keep in mind is that it is unfair in many cases to charge the foreign born with the evils existent in our city governments, when as a matter of fact they are not only everywhere in the minority but also are in large numbers unnaturalized and legally incapable of direct participation in politics. In the city of New York in 1920 less than half of the foreign-born whites were naturalized. In the country as a whole, of 6,928,452 foreign-born adults in 1920, only 3,314,910 had acquired citizenship. This is not spoken of as a desirable situation. It is far from being that, and there is undoubted value in the great Americanization and naturalization drive which has recently overspread the country. But if the foreign born generally cannot vote, neither may they be blamed for the supposed decadence of municipal institutions. Indeed, as will be shown later, there has been continued improvement of city government in the past thirty years, at the very time when immigrants from southern and eastern Europe were pouring into the cities, yet no one has been so naïve as to attribute this better-

ment to the inrushing foreigners. *Post hoc ergo propter hoc* is never good logic.

Attempts have been made to distinguish between desirable and undesirable immigrant nationalities on the basis of the rapidity with which they become citizens. It has come to be believed by many persons that the late-coming Italians, Poles, Russians, and others are not as good citizen material as earlier immigrant strains because they do not naturalize as rapidly. A recent investigation of this point has demonstrated that there is very little to choose between the different nationalities from this point of view.[3] The most important factor in bringing about naturalization seems to be length of stay in this country. Time, says Bacon, is the greatest innovator. In Cincinnati, a city of slow normal growth in late years, more than two-thirds of the foreign-born persons of voting age in 1920, were naturalized. In Cleveland, on the other hand, where recent growth has been rapid, less than half of the foreign born are naturalized, and in Detroit, which doubled in population between 1910 and 1920, less than two-fifths have acquired citizenship. The average period taken for completing naturalization is about twelve years from the time of arrival in this country. The period between arrival and naturalization for the newer immigrants is not longer but slightly shorter than that for older stocks. We merely tend to exaggerate the situation that is at hand and to forget the history of what has gone before.

THE FIRST NATIVE GENERATION

The population of the city of New York in 1920 was 5,620,048. Of this number only 1,164,834 were native white persons of native parentage. On the other hand, 1,991,547 were foreign-born whites; 1,873,013 were native-born whites of foreign-born parentage; and 430,069 other persons were native born but had at least one parent foreign born. In any study of the social and political complexion of American cities, it is essential to consider this large group of persons whose parents are foreign born. They are born into a new world, but they are not of it. They are divided between two allegiances. In their homes they cannot help hearing the language, the tales and the traditions of the fatherland. In the street, in the playground, and in the school, they see and hear new things. Where the parents are in good economic position, the children may be brought up in an exemplary manner, but only too

[3] Gavit, *Americans by Choice*, Ch. VIII.

often the poverty and the alien atmosphere of the home drive the children to the streets for their companions. Here, more or less consciously they take on a sort of protective coloration. They imitate their street companions rather than their parents, and unfortunately the city streets have failed in recent decades to provide the best examples for imitation. Aside from the home and the church, the public schools have done a tremendous work in counteracting street influences and in giving the first native generation a grounding in the better cultural ideals of America. That the work has not been done perfectly, none would perhaps deny, yet on the whole the results are promising.

THE NATIVE-BORN INHABITANTS OF CITIES

Since we have begun to classify the people of the city according to the place of their birth, we cannot neglect to speak also of the native-born group. In most American cities the largest single group of people consists of those who are native born of native white parents. This group may be further subdivided into those who have been born and perhaps brought up in the country, and the larger number of those who have been born and reared in the city or in some other city. It is not easy to characterize these several groups with precision. We lack statistical information and cannot wholly rely upon observation. Those who have come into the city from the country are generally speaking a propertyless and restless class. They come to the city for education or for economic advancement or for some other purpose. In many cases they begin in lowly positions, as housemaids, or factory hands or even laborers, but some start higher in the scale. It would appear that many of our "most successful business men" have had a rural origin, but this was perhaps more true in the past when cities were relatively small but growing than it will be in the future when the city population completely overshadows the rural populace in numbers. From a political point of view the various groups of native-born city-dwellers cannot easily be classified. They furnish recruits for every class in society and for every political faith.

MEN AND WOMEN IN CITIES

Immigration has influenced the American population in numerous ways. It has helped, for example, in producing a numerical predominance of men over women in the national population as a whole. In 1920 there were 104 men to every 100 women in the country. This

situation is, however, reversed in some of the larger American cities. There were 68 cities of over 100,000 population in 1920. In 37 of these there were more men than women, but in 31 there was a numerical predominance of women over men. The latter number includes some southern cities where the greater number of negro women than negro men accounts for the discrepancy, as well as Washington, D. C., with its army of stenographers and clerks, and certain light manufacturing towns of the north where the women factory workers are numbered by the thousands.

When we speak of political influence, we must of course remember that a great many women in our cities are engaged in offices, in shops, in industry, and in domestic service. Like their sisters who manage the household, these women have not much time to devote to political affairs. Nevertheless there are good reasons for believing that women are destined to play a relatively greater part in the affairs of local government than in state or national affairs, and that their influence will be more felt in cities than in rural districts. In the first place, there is in every city a small class of women having education, leisure, and some means to devote to public affairs. These women are the same, or of the same type, as those who once organized to bring about woman suffrage and the prohibition of the liquor traffic, and no one who properly evaluates their services in these two directions will be inclined to underestimate the very real influence which they can exert. In the second place, it is far easier to get speedy and united action among women who all live within a few blocks of each other, and who are united by telephones, street railway service, and good paved streets, than it is in rural districts, where distances are long, travel is more difficult, and the household cares keep practically all the women at home most of the time.

Furthermore, city government presents exactly the problems in which women must, in the long run, be most directly interested. This is not to say that women are not interested in foreign affairs, in the abolition of war, and in all great national problems. They undoubtedly have wide and varied interests. But it is the affairs of the city which most immediately affect the home. Municipal housekeeping is but one phase of all housekeeping. Police protection, the health service, the cleansing of streets and public places, and education, not to mention other local functions, emanate directly from the municipal government. Most cities provide the water supply which enters the home to be used for countless purposes. Many cities provide also the gas and

electric light services, and some furnish even street railways and central heating. Indeed, as the Webbs have expressed it, the city is in one sense a compulsory society of consumers.[4] It produces things for local consumption, things which enter directly into the family expense budget. The housewife, whose function it is to supervise the family expenditure, cannot help being keenly interested in all that the city government does. She is by nature endowed with municipal interests. Only through good city government can her household budget be kept within reasonable bounds.

It is no longer good form for men to speak patronizingly of women's work in local government. Long before they were finally enfranchised in 1920, women had become the dominant factor in the solution of many local problems. In many cases where men have thought a situation hopeless, or have walked by on the other side of the street to avoid seeing it, women have been found who had the time and the energy and enough of the spirit of self-sacrifice to do the work which needed to be done. Whether we look, therefore, at the conspicuous accomplishments of such leaders as Caroline Bartlett Crane, Jane Addams, Frances A. Kellor, Ella Flagg Young, and the others who have stood out most prominently in recent years, or at the solid results obtained by the hundreds of thousands of women of less fame who have filled the ranks as workers in countless civic organizations, we cannot suppress a desire to applaud. We must ask ourselves, if women did all these things without the vote, how much more will they not accomplish in their day of new-found power? [5]

AGE

When we compare urban and rural populations on the basis of age we are impressed by three significant facts. First, there are relatively fewer persons under 20 years of age in the city than in the country. Secondly, as a corollary of the first, there are relatively more persons of voting age in cities, and thirdly the average age of urban voters is

[4] *A Constitution for the Socialist Commonwealth of Great Britain*, by Sidney and Beatrice Webb, pp. 8–9, and see also Part II, Ch. IV.

[5] See Helen C. Bennett, *American Women in Civic Work*, for the work of Caroline Bartlett Crane, Sophia Wright, Jane Addams, Kate Barnard, Albion Fellows Bacon, Hannah Kent Schoff, Frances A. Kellor, Julia Tutwiler, Lucretia L. Blankenburg, Anna Howard Shaw, and Ella Flagg Young. Less biographical, but full of facts, is Mary Ritter Beard's *Woman's Work in Municipalities.*

lower than that of rural voters. The 1920 census gives us the following figures:

	Urban Pop.	Per cent	Rural Pop.	Per cent
All ages	54,304,603	100	51,406,017	100
Up to 19 yrs. of age	19,436,302	35.8	23,606,696	45.9
20 yrs. old and up	34,769,466	64.0	27,749,457	54.0
Age unknown	98,835		49,864	

We must remember, of course, that in the urban districts there are more unnaturalized foreigners than in rural districts. At the same time most of the negroes who are in fact disfranchised live in rural districts. Making all proper deductions it is still very close to the truth to say that in urban districts to-day there are about 25,400,000 potential voters as against 21,750,000 in rural districts. The ratio of potential voters to total population is about 46 per cent in cities as against 42 per cent in the rural areas. It is true that many potential voters residing in cities do not become actual voters either because in their frequent migrations they fail to establish residence in any one place, or because they neglect to become registered, or for some other reason. The physical difficulty of getting to the polls likewise prevents many rural voters from exercising their franchise. Both relatively and absolutely city voters to-day outnumber the rural voters. If reapportionments of state and national legislative representation were made to-day on the basis of voting strength city votes could dominate the national house of representatives and the legislatures of more than a quarter of the states.

It is important to observe also that the average city voter is a younger person than the average voter in rural districts. The crude figures show that 42.7 per cent of our urban population consists of persons from 20 to 44 years of age, whereas only 33.8 per cent of the rural population falls in this age period. The difference in favor of the city is a considerable one even after the crude figures have been corrected. It is accounted for in part by immigration from foreign countries, and in part by the migration of young people from the country to the city. It would appear that it is mainly the native whites of native parentage and not those of foreign or mixed parentage who leave the farm for the city. Thus the American city of to-day has the benefit of the labors of the most productive years of thousands of young people whom the city did not rear or educate. A strong argument for both state and national support of education to-day is that the country school dis-

tricts, with fewer workers in the most active and productive years of life, now educate at their own expense hundreds of thousands of young people who soon leave for the cities to find employment. The cities get the benefit without paying the whole cost.[6]

On the political side it may be possible to trace some connection between the age of its dominant voting group and some of the characteristics of the city's electorate. We know that there have been many changes in the form of city governments, while township and county governments in rural districts have remained virtually unchanged for over a century. We know, too, that city governments have multiplied their functions and activities at a surprising rate, yet at the same time the functions of the rural constable, justice of the peace, and overseer of highways, have shown no material change. Is this an evidence of the youthful impetuosity of our urban populations? Perhaps there is some connection between the age and the "progressiveness" of a people, but final conclusions cannot be given at this time.

ECONOMIC PURSUITS AND CLASSES

There is a theory of politics in which every voter is pictured as a reasoning and reasonable animal who, with full knowledge of all the facts, decides every question put before him at election time without regard to his own interests and purely on a basis of what he thinks is for the good of the entire public. This theory of a perfect political man was suggested in one form by Rousseau.[7] It was at one time tacitly held by a number of democratic theorists but is not now generally held in high esteem. Another view held in various forms by certain radical thinkers is, in its crudest form, the theory that every man thinks first of himself and his own welfare, and that he votes accordingly. If he thinks a five cent street car fare, or public ownership of the gas works, or lower taxes, or the legalization of five per cent beer, or the establishment of a local park, will benefit him personally,

[6] The reader will undoubtedly see a partial fallacy in this reasoning.

[7] *Social Contract*, Bk. I, Chs. V, VI, VII; Bk. II, Ch. III. But Rousseau did not assert that men would always act from purely public-spirited motives. What he said was "that the general will is always right and tends to the public advantage; but it does not follow that the deliberations of the people are always equally correct. . . . There is often a great deal of difference between the will of all and the general will; the latter considers only the common interest, while the former takes private interest into account."

he will vote for it; if he thinks it will harm him he will vote "no," without regard to any fine-spun theories of general welfare.[8]

There are other theories of politics which do not need to be stated here. One does not need long to observe the activities of voters to see that the second theory so briefly stated above, although far from containing the whole truth, is closer to the realities than the first. Although there are many exceptions to the theory, and although it is much in need of refinement, there is enough truth in it to challenge our attention. We realize, when we stop to think about the matter, that we cannot understand politics without knowing something of the economic and social life and motives of the men and women who are in politics. How else can we explain the Socialist party, the Non-Partisan League, and the Farmer-Labor party? How can we understand city government and politics without first noting the social and economic forces which move people to desire this or that and to work for it?

The modern city is the crowning exemplification of the principle of the division of labor or specialization. In the national or world-wide economic order, the city as a whole represents this principle since it does many things well which would otherwise have to be done crudely and painfully on the farm, in the forest, in the mine, or on the seas. At the same time, each city may have a distinctive function. One makes automobiles or kodaks, while another packs beef and pork or grinds flour, and still another loads, unloads, and outfits ships, or provides a stock market and financial funds. Within the city there is, then, a more minute division of labor. Some men engage in manufacturing, some in building; some work at hauling and loading and transporting things; others buy and sell; and still others handle the money, the stocks and the bonds, which serve to finance the whole operation. And because many men and women are brought together to do all of these things there must be local services for the local consumers: streets, water supplies and sanitation, newspapers and means of communication; gas and electric works; schools and churches; and a host of retailers of food, fuel, clothing, and other necessities. There must be doctors, dentists, lawyers,—and politicians. Anyone who has thought of the city as a simple society in which people have all very much the same desires, needs, and opportunities, might well study the census bureau's classification of urban occupations. Even it is oversimplified,

[8] Of course if a man wants fares raised or reduced to five cents, he usually argues that it is for the "public" benefit. Few of us are able clearly to analyze our motives or willing frankly to state them.

because census takers could not well conform to any but a simple classification. Were it to go into detail, to show how one clerk in a bank differs in duties from another, or to indicate the division of labor in every factory, printing house, or department store, the enumerator's task would be hopeless.

To know our cities we should know, also, how many of their residents are capitalists; how many are active owners and managers of large businesses, and how many of small; how many live on salaries, how many are skilled mechanics, and how many are common laborers. Delving further into figures of employment we should ascertain what proportion of the workers are on the public's pay rolls, what percentage work for large private corporations, how many are employed by small firms or employers who work side by side with their employees, and how many are wholly independent workers. Incomes, too, should interest us. We need to know not only the amount of income, but also the nature of it. Here we should instantly observe several marked differences between rural and urban labor. The farmer himself has an uncertain money income because of the uncertainty of crops and of the market, yet he has almost always some means of sustenance, and is to this extent "independent." The farm laborer, on the other hand, is paid largely in board and room and only partly in cash. The city worker's income is primarily in cash, not in goods. His position is insecure, in the main. He can hardly be called independent. This is particularly true when he does not own property, as is so commonly the case to-day. In most cases even his home is not his own; a landlord may evict him or raise his rent on thirty days notice. The value of his wage or salary depends entirely on its purchasing power, yet over this he has almost no control since he cannot regulate prices.

Of importance also is the fact that in cities, unlike the rural districts, the richest and the poorest in the land live but a few blocks apart. The remarkable uniformity of economic well-being which de Tocqueville observed in America a century ago may still persist to some degree in some rural districts, but it is certainly not characteristic of the modern American city. From this point of view there are to-day distinct classes in the United States. It is a fact to which radical orators frequently call attention, and which the more well-to-do and conservative elements fully recognize. In their first realization of this significant modern fact, many people first experienced a sensation of fear. Suppose the rich should try to crush out the poor entirely, or suppose the poor were to rise up to destroy the wealthy? These twin

fears have expressed themselves in recent years in acts of violence and repression which were wholly unwise and uncalled for. There is strong evidence to sustain the view that the middle class is not being crushed out, but continues instead to flourish, to increase in numbers, and to have a generally steadying effect. The city has its many classes and sets, based upon economic well-being, education, nationality, birth, religion, fraternal affiliations, politics, and what not, yet the lines of division are so shadowy and variable, and the groups overlap so strangely at the edges that we cannot draw sharp and definitive lines at any point. Even the so-called "Four Hundred" could not be delimited by its own supposed members. Life is dynamic, and in life men and women keep moving up and down and in other directions in a most inexplicable manner. The movement is, however, entirely within the social body, and the constantly shifting middle class retains temporarily both those who move up and those who move down.

URBAN POLITICAL GROUPS

It is well to remember, also, that any great society like a large city does not consist of merely the 200,000 or 500,000 separate persons counted in the census each acting for and by himself. Much more truly a city can be pictured as being made up of a whole series of minor sets, groups, classes, and societies which unite and divide, only to unite and divide again as one question after another comes up for solution. The members of a church or of a local improvement society may be wholly united on one question and distinctly divided on another. In analyzing an urban political society, therefore, we cannot speak with precision and finality. There are very few absolute and eternal truths in human conduct and affairs. A banker, being a Christian as well as a banker, will sometimes act more like an Episcopalian vestryman than a banker, yet in general we can say that successful bankers will hold certain common views and perhaps even act in unison when certain questions come up.

The fundamental political division of the people in American cities is upon economic lines. At the one extreme stand the laboring classes represented by the trades unions, the Socialist party, and other organizations. Almost instinctively this great body of voters opposes and is opposed by the organizations of the successful and well-to-do business men. There is all too frequently a wide chasm between the trades and labor assembly and the local chamber of commerce, representing

the local magnates of finance, commerce, and industry. In a number of places these organizations form the rival poles about which cluster, or to which are drawn, the great mass of middle-class voters at the time of the municipal election. No account of municipal politics in the United States can be complete which does not recognize this central fact.

To the open-eyed observer it is unnecessary to stress the importance of studying the various groups which operate actively in municipal politics. The individual is much more difficult to study, since his action is not so predictable. Let us take a laborer as an example. Sometimes he will vote to protect or to improve his economic position. At other times a moral impulse may move him to vote against a labor candidate, or he may be convinced by arguments that his interests are really different from what he thought them to be. Very few men are so simple that they are always dominated by a single interest or thought or motive.

In like manner the various groups active in city politics act differently under different circumstances. Sometimes a group is divided upon a particular question. On the whole, however, there are certain groups in all large urban communities which act with surprising consistency whenever certain questions come up. No one can predict the outcome of any municipal campaign who does not keep these different groups in mind and ascertain how each will act. We shall speak first of various groups of business men, but in all that is said it must be remembered that we do not pass moral judgments. That must be left to the authorities on political ethics. We will assume that, while keeping within the law, a bond broker or contractor has as much right to get and hold business as a laboring man or a city employee has to try to get an increase in his wages, that it is just as moral for a public utility to try to hold fast its valuable franchises as it is for the exponents of municipal ownership to propose public ownership and operation.

The larger banks, trust companies, and allied financial interests form generally a fairly united phalanx in municipal affairs. In many places they appear to exercise a significant control over the local press, although it has been found possible to finance a labor press in many cities without their hearty support. The banking interests are also very commonly financially interested in the local public utilities. They see "eye to eye" with the utility corporations in almost every question involving franchises, rates, and public regulations. In general

it may be said that they are very sensitive to all public acts which may "hurt business." They have at the same time a particular and direct interest in municipal bond issues, in the deposit of the municipal funds, and in the investment of the municipal trust and sinking funds. They are not, generally speaking, opposed to the issue of municipal bonds (which means the borrowing of money by the city), since they participate in the business and earn commissions or discounts by so doing. Through the deposit of municipal funds, favored banks have been known to have made good profits. Their interest in the municipal sinking funds lies in the fact that they often act as the agents for other cities, counties or states, in the flotation of bond issues which the local sinking fund authorities are urged to buy for the investment of the sinking funds. Like all other business interests, the banks are also keenly concerned about the local tax rate and the efficiency of the local administration, for they are among the largest taxpayers in the community.

The public utility interests have distinct problems. While they receive to-day a very important protection from the courts and state legislatures, they are not wholly exempted from the control of local authorities. Indeed, they find it to their interest to follow local politics very closely. They wish, of course, to keep, to improve, and to extend their franchises. They desire to keep at a minimum all public interferences with their business. City officials have many ways of obstructing the public utilities in the performance of their services and of increasing their costs of operation. By litigation to compel extension of lines or paving between street car tracks, or to require the placing of cables in conduits below the streets, or to compel the installation of safety devices, an unfriendly city administration can keep a utility corporation involved in expensive court procedure for months or even years at a time, and can at the same time hurt its business by destroying public confidence in the company.

The class of men who own and who deal in real estate are usually organized into several groups, such as a Real Estate Board, a Building Owners' Association, and others. They have indeed a very direct interest in the local government. Because city taxes are in such a large measure taxes upon real estate, they strive constantly to keep down the tax burden, or to shift it to other subjects. The just and scientific assessment of property frequently engages their attention. Those who buy and sell land and houses are also interested in getting local improvements, such as parks and paving, at least cost. The

favored few who can get "tipped off" as to the location of the next park or other public adornment are often in position to turn their knowledge to profitable use. As a group, builders and owners are always interested in establishing sound and in preventing unreasonable building regulations, and they have recently found a new worry in the movement for the public regulation of rents. Their most important recent activity, however, has been in the direction of improved city planning, with a particular view to such "zoning" of the city as will protect real estate values.

Wholesalers and retailers, including the owners of the department stores, have not that direct interest in municipal politics which is characteristic of the groups that have just been mentioned. There are of course many ways in which municipal officials may interfere with their businesses, but these are on the whole of no very great consequence. They relate in the main to the sanitary handling of commodities and the provision of safety devices. Manufacturers, on the other hand, have for some years shown an increasing concern over the course being taken by municipal government. This is particularly noticeable where the laboring class has come into control, for here there has been a definite attempt to favor union labor in city work, while in cases of strikes "labor" mayors have not shown any great zeal in the use of the police to protect business property. It would appear in this connection that the national manufacturing interests have carried their struggle against the unions over into the local political field.

Railroad and shipowning interests, with their extensive trackage and terminals in cities, have many concerns with the local government of cities. In their attempts to separate the street grades from those of the railroads at crossings, that is, to make the railroads run either above or below the streets, some cities have recently put a very heavy financial burden upon the roads. Cities have also been active in some cases in the suppression of the smoke nuisance, and some have been reluctant to permit the expansion of railroad terminals by permitting the laying of trackage in alleys. In these and other respects the railroad companies have found themselves in constant contact with the governments of cities, yet their activity in city politics has not recently been as noticeable as that of other business groups.

It is perhaps unnecessary to speak at length of the theater and the moving picture interests, of the hotels, the restaurants, the cabarets, and the dance halls. In practically all cases they require local licenses

and are subject to more or less strict regulation and inspection for the protection of the health, morals, and safety of the people. They keep themselves closely informed about local politics, with particular attention to the police department, and often participate in local elections with more or less cohesion.

Some of the groups and interests which have been mentioned take a direct and active part in municipal politics. Others act more or less indirectly through chambers of commerce and similar organizations. Rotary clubs, Kiwanis clubs, Lions clubs, and kindred organizations representing many lines of business frequently hear discussions of political questions and sometimes adopt resolutions, but they serve rather as clearing houses for business information than as political organizations for business men. Indeed it may be said of the business interests generally that their more important political activities are directed through recognized political channels, namely, local party leaders and organizations. Smoothing the way between the various business interests and the local politicians and officials are several types of go-betweens, chief among whom are the local political bosses, men who occupy places in the local party organizations where by persuasion, acts of friendship, bluff, blackmail, and every other known device they maintain their influence and accomplish their ends. In many places, however, the power of these politicians is waning, and business groups everywhere are becoming more and more independent of their services.

At the foot of the ladder, and not to be classed with legitimate business, are the gambling and vice interests, and the illicit purveyors of equally illicit liquors and narcotics. Although their businesses are beyond the pale of the law, they continue to operate, first, because their dealings are to some extent profitable, and secondly, because the city administration is unable, for one reason or another, entirely to suppress them. Participation in politics is almost indispensable to these groups. The most honest and efficient city administration cannot destroy them entirely, although it can make hard the ways of the transgressor. To protect themselves, therefore, such interests give largely of their time, their votes, and their money, to any party or group of candidates which is known to be sympathetic toward them. There is evidence, however, that their lot grows harder from decade to decade. Protection cannot usually be openly purchased as once it was. With the practical elimination of the saloon and brewing interests from politics in many places since the adoption of the eighteenth amendment the backbone of this great group has been destroyed. The

handwriting is on the wall. While we must not expect to see these factors eliminated entirely from urban life and politics, there is every reason to believe that their political influence and activity will steadily decline.

It will perhaps tend to clearness if we discuss next the laboring classes, since their interest in city government is something quite distinct from that of business men. The latter when acting in groups tend to think most of the good or bad effect which any particular act of the city government will have on the conduct of business. In other words, their attention is largely concentrated on questions of production and of profits. They want the city to do things which will promote business, and which will advertise the city as a good place in which others can do business. From this point of view an ideal city would be one in which the tax rate was low, the municipal administration was highly efficient, public work was done by private contract, no public utilities were publicly owned, business was encouraged by the expenditure of municipal funds for advertising the city, for building convention halls, etc., and labor was tractable and well in hand.

The laboring class generally, as it is now led in American cities, takes almost the opposite view on most of these questions. The laborer's interest in the city government is primarily that of a consumer. He feels that his real income will not be increased by the growth of the city, for he will still be a laborer. What he wants from the city is to have it provide necessary services for him at the lowest possible cost. Where he does not own his home, and pays no direct taxes, he has little interest in keeping the tax rate low. He wants services. He is not greatly interested at present in making the city government more efficient. He thinks it no evil but rather good for the city to pay high wages to its laborers, and to do all its work directly instead of through contractors. He very commonly desires public ownership and operation of utilities because he believes that this will mean the saving of corporation profits and consequently lower rates and fares for him and his class. He wants municipal funds spent on markets and other facilities for the consumers, rather than upon convention halls for business men, and finally he wants to see labor and the friends of labor in control of the city administration, in order that the city government may lend a helping hand in case of labor difficulties.

It is unnecessary now to go back through the history of labor in municipal politics. From earliest times American labor has played some part in the politics of the urban community. Political organiza-

tions of laboring men have assumed many different forms, but since the abolition of property qualifications for the elective franchise, labor has always been a factor which has had to be dealt with. Up to a few decades ago the urban laboring classes tended largely to go into the Democratic party, though enough were drawn into the Republican ranks to keep a fairly even division in a number of cities. It was significant, however, to find many a normally Democratic city in a normally Republican state. In the last twenty years or more the laboring vote has grown more independent of the control of the old parties. In the years before the great war, many were attracted to the platform and leadership of the Socialist party. During the war there was a great shift, but labor, instead of going solidly back into the old parties, in many places found itself strong enough to form a separate municipal organization, so that a number of cities are now under what amounts to labor government. In the largest cities, however, labor still votes with one of the old parties. In New York under Mayor Hylan it has been voting the Democratic ticket, while in Chicago under Mayor Thompson, who ran on a platform much like that of Hylan in New York, the laboring class generally voted the Republican ticket. So slight is the significance of national party names in urban politics!

Labor, like the business interests of the city, is not united. It is too large a group to stand as a single party. It is divided not only between organized labor and unorganized, but each of these in turn is subdivided into various conflicting groups. A small but not entirely a negligible number, have gone off into the extreme left wing of the Communists and the I. W. W. A somewhat larger number are orthodox Socialists, and further to the right are those who affiliate with the Labor party, or the Farmer-Labor party, or the Working People's Nonpartisan Political League, while at the extreme right are those who consistently vote the Democratic and Republican tickets. As to the success which labor has achieved, or as to the wisdom of its municipal policies this is not the place to speak. As in the case of the business interests, labor usually works through well-known political channels, from the big boss of the city down to the petty leaders in the wards and precincts. Here, again, as in the case of the business interests, our endeavor is to state the facts and not to pass moral judgments.

We have not as yet exhausted the list even of the active political groups. An interesting and influential group is that of the men who are politicians by vocation, giving either all or a very large part of their time to political work. Nominally some of these men are en-

gaged in other callings; they are real estate dealers, or operate insurance businesses, or law offices, or they carry union cards entitling them to work as laborers. Some of them hold public office. Actually they are all party or organization workers. Beginning as young men in most cases, they have worked about party headquarters, at the polls, and in political clubs; they have made acquaintances and developed a following or a certain political usefulness; and they now continue to work and to wait for political advancement. A few have already attained places in the inner party councils, but the majority will never reach that goal. Their income is uncertain and unsteady. Some of it comes from real estate speculation, some from the party funds, but it would be vain to attempt to designate all its sources. It is this group, from the bosses down to the precinct workers, who constitute one of the principal obstacles to reform organizations. Their livelihood depends to a large extent upon keeping politics upon its accustomed plane, and upon keeping the essential rules of the game unchanged.

Closely affiliated to the group of political workers there is, in many cities, a group of men who live by public contracts of different kinds. These contractors are primarily politicians, but they do not hold public office.

Far more numerous than either the politicians or the contractors, but overlapping on the former group to some extent, is the large number of municipal employees. This group consists of policemen, firemen, school teachers, clerks, laborers, and many other classes of workers who are directly upon the public pay rolls. Many of them hold their places by virtue of political appointment, but in the majority of cases in the large cities they have received their places on the basis of an examination or some other test of merit. Their interests as a group are in the improvement of the civil service from the point of view of tenure, salaries, hours and conditions of work, vacations, and pensions. This is not to say that they have not other interests or that they are not good citizens, but merely that when they act as a group they usually work for these things.

We have now spoken of some of the larger or city-wide groups which take part in municipal politics. The reader can easily think of others, such as the great sorority of housewives and other domestic workers. There are local groups as well, such as the local improvement societies and local commercial organizations in various sections of the city. In these cases the grouping is not by class interests but by interests arising out of a common location. There is a local nuisance to be suppressed,

or a street to be paved, a park to be provided or a school to be repaired and made safe. Practically all classes in the neighborhood are interested although it be in varying degrees. In many municipal elections it is these local needs which seem to be uppermost, the local groups which really carry the day.

As we leave the various interest-groups, we come to a veritable host of organizations which take a more or less active part in political discussion and action. There are the numerous professional societies, the city clubs, the lunch clubs, the open forums, the settlement houses, and many other groups which have what might be called a disinterested interest in public affairs. Some of them are so exceedingly tolerant as to permit both sides of municipal questions to be discussed. The influence of such organizations in the formulation of a sound public opinion can hardly be overestimated, but their actual political influence is not great.

To bring this survey to a close, we may mention finally the churches and other organizations for moral uplift. Some church and social service workers have, of course, a direct pecuniary interest in what they are doing, but on the whole the supporters of the churches, the Y. M. C. A., the Y. W. C. A., the Anti-Saloon League, and numerous other organizations which work for social betterment have no material reward in view. Their work is, as they see it, for the betterment of social conditions in the city, and to this laudable work they give of their time and their money. On the whole, however, their work is less well financed and less well organized than it needs to be to accomplish the desired purpose, if, indeed, that purpose can be accomplished at all. They have entered upon an age-long struggle, for their aim in municipal affairs is nothing less than the elimination of gambling, vice, liquor, narcotics, and the other things which drag men and women down from their accustomed places in society. Their activities in this direction are in many cities entirely too spasmodic to be highly successful. An occasional moral wave sweeping over the city when conditions have become unbearably bad seldom accomplishes lasting results. But this is not the place to speak of the success of this factor in municipal politics, since the aim is merely to name and to evaluate the various forces and groups which must be taken into account.

These are then some of the politically influential groups which work in and through the politics and government of a city to accomplish their several divergent aims. It is patent that some of them must be disappointed if others are to win. The city as a whole is not united for

the accomplishment of definite and well-understood ends, but is more like a house divided against itself. This does not mean that the city is in danger of falling. There are too many factors in the situation which tend to maintain our municipal institutions to admit any such fearful thought. Chief of these steadying influences are the ingrained conservatism, optimism, and sense of fair play, which characterize the American people, city dwellers as well as country dwellers. The city laborer himself is truly conservative. Even in times when he is out of work he does not incline to overthrow the social order. He is ever hopeful of a better day, hopeful of his own future prosperity, and is willing to play fair with his opponents. The same can be said for the business man, and for that large number of people who occupy a middle position in life. Indeed, even in our modern cities the great majority of our people are still middle class, and it is that class which has always been keel and ballast to the American ship of state.

NEIGHBORHOOD LIFE IN CITIES

Many of the groups which were mentioned in a preceding section as being active and important factors in city politics are groups which have been formed along economic lines. In a rough way they represent the division of urban societies between the wealthy and influential upper classes and the poorer classes of workingmen. Of course, as we have said, the division is nowhere perfectly clear-cut. There is a great middle class, and there are always some who are moving up from below, and others who are being drawn or forced down from above. It is only when we see at one time the thin upper layer of the very wealthy and the larger lower stratum of the really poor that we observe the sharp contrast which has produced the "class consciousness" of modern times. It is this class consciousness which has led in recent years to the organization of workingmen's parties on a large scale (the Socialist party, the Labor party, etc.). The so-called "class struggle" which has resulted from the arousing of class consciousness has been decried in many quarters as un-American, but it is with us everywhere, particularly in cities, and it must now be faced. It is a fact and cannot be exorcised by words.

Class parties represent the division of political society along horizontal lines, the well-to-do at the top, the middle class next (which is already beginning to bestir itself to organization in some countries), and the poorer classes or "proletariat" at the bottom. Such a strat-

ification of society has existed at many times in history and in many places. It is by no means, however, the only possible basis of party organization, either nationally or locally. Some persons question whether it is ever a proper basis. The present Republican and Democratic parties do not exemplify a class division with any precision, for though one may have a more hearty support from wealthy people generally, and the other a more loyal and enthusiastic support from the laboring classes, as a matter of fact both parties attempt to appeal to all classes and deny the charge, when it is made, that they are class parties. This is particularly the case in local politics. In some sections of the country the Democratic party is distinctly the party of conservative business men. Elsewhere it is the party of labor but also draws much support from other classes.

Another basis for the organization of political society is the vertical or local. Instead of all laboring men throughout the city feeling that they should belong to a workingmen's party, they might well feel a keener sense of loyalty to the neighborhood groups of which they are members. Their local interests might, in other words, be considered more important than their class interests. Their attachment to their neighbors, of whatever rank or class, might well be greater than their attachment to other laborers as such. Now it is perfectly obvious in any city whose population runs into the tens or hundreds of thousands, or even millions, that no man can have intimate contacts with all men of every neighborhood and class. He must, and naturally does, draw the line somewhere. We must then consider what are the conditions of neighborhood life in American cities. Is it possible to organize our urban politics on the basis of local or neighborhood groups?

The question we have to answer is not merely how we can get all the persons in the neighborhood to know each other and to take a common interest in neighborhood welfare. Equally important is it to see to it that all classes shall be represented in each neighborhood. One of the chief difficulties in modern American cities is the fact that the rich and the poor live in entirely different quarters. In one section are the so-called "silk stocking" classes and in another section are the slums.[9] East side stands opposed to west side, or north side to south. Thus

[9] But we must keep in mind that American cities do not usually have such sharp social and economic contrasts as are to be found in some parts of the old world. After all, the wearing of silk stockings no longer is a valid distinction between the rich and the so-called poor.

class differences are really accentuated by locality. Even when the distance separating different sections is but a few blocks, there is a social chasm between the two almost impossible to bridge. A neighborhood meeting in one section of the city would hear many expressions of the point of view of the well-to-do business and professional classes, but the laboring man's voice would not be heard; in other neighborhoods the situation would be reversed. If neighborhood meetings are to be really fruitful of mutual understanding, it is necessary that all classes and points of view be represented, that each may enlighten the other. Men must meet upon the common basis of equal citizenship and mutual interest in the public welfare.

Another factor which makes difficult the development in cities of the ideal neighborhood is the high mobility of the population. City dwellers have no great attachment to any particular place. They move freely and frequently. Studies have been made which indicate that this constant movement is (a) partly from house to house within the ward or precinct, (b) partly from ward to ward within the city, and (c) partly out of, or into the city.[10] Those who have lost their fortunes leave the better residence sections for homes in poorer neighborhoods. Those who are financially on the up-grade leave their old neighbors and move into finer and more expensive residence sections. In any case they find it hard to make new friends quickly in the new neighborhood. Families live for five, ten or even more years without knowing their neighbors. This constant moving about also makes it hard for churches, clubs, settlement houses, improvement associations, and all other types of neighborhood organizations to keep up their membership, with the result that some simply close their doors in despair.

It is not surprising to find that it is in the poorer sections of the city that the shifting of population goes on most rapidly. Of course, where the section is entirely monopolized by some particular foreign-language speaking group, there may be some stability and some neighborhood life. The very poorest sections generally have, however, a distinctly heterogeneous population of transient workmen, with and without families. In such sections the people are likely to be of limited education. They will be suspicious of each other, the white resenting the intrusion of the negro, the Gentile looking askance at the Jew. There is generally no beauty in the surroundings to induce the people to

[10] McKenzie, *The Neighborhood: a Study of Local Life in the City of Columbus, Ohio*, originally printed in the *American Journal of Sociology*, Vol. XXVII, 1921–22; Elmer, *A Neighborhood in South Minneapolis*, Minneapolis, 1922.

stay, nor is there much ownership of real property to bind the residents to the locality. In such places the inhabitants may have little but their poverty in common. They will lack means of communication as well as means of social expression; common social standards will be wanting, and there will be few means of creating them. Evidences of disintegration and decay will be found on every hand. The very tenements and shops without paint and props to assist them seem to be making a losing fight against the destructive power of the elements. The buildings, like the people who inhabit them, appear as unlovely as they are unloved. It is in such districts, where neighborhood life is most needed, that it is likely to be found at its lowest ebb. Because of this fact the poorer classes generally feel that they are likely to lose strength and influence in any scheme of political organization based on neighborhood units. Perhaps this is a mistaken idea, yet it may help in part to explain why the laboring classes flock so much more readily into class movements such as the Socialist and Communist parties.

But while the outlook for neighborhood political organization is not promising, there is almost nothing that can be done which will be more beneficial to local political life than to have neighborhood groups of all kinds formed for the discussion and promotion of the local public welfare. While some men and women may have an opportunity to learn about public matters through their city-wide labor unions or commercial clubs or other similar organizations, for the great mass of people of all classes except the more well-to-do there is no substitute for the neighborhood meeting. It is the best means, the indispensable nexus, for binding the individual up with the city at large and the world outside, for giving him an outlook upon public affairs. The city with the best neighborhood organization in all sections of the city is very likely in the long run to have the most satisfactory local administration. The neighborhood, says Robert A. Woods, "is the very pith and core and kernel and marrow of organic democracy." And he adds that it "is large enough to include in essence all the problems of the city, the state, and the nation; and in a constantly increasing number of instances in this country it includes all the fundamental international issues. It is large enough to present these problems in a recognizable community form, with some beginnings of social sentiment and social action with regard to them." [11]

The creation of neighborhood life in cities is already going on to an extent little understood by the public. In the more normal and

[11] Woods, *The Neighborhood in Nation Building*, p. 148.

well-to-do sections of every city will be found church clubs, men's clubs, parent-teachers' associations, local improvement societies, local commercial clubs, political clubs, and many other types of associations. In poorer sections where the forces of disintegration are harder to combat will be found social centers, settlement houses, home mission societies, and other forces always at work to build up the sense of neighborhood responsibility in the people. Without some knowledge of these constructive agencies the problems of local politics in cities cannot be understood.

REFERENCES

The chief source of statistical information concerning the social composition of American cities is, as we have said, the reports of the Census Bureau. See particularly *Fourteenth Census of the United States, 1920, Population* Vol. III, *Composition and Characteristics of the Population.*

Among the many social surveys, mention may be made of *The Pittsburgh Survey* of the Russell Sage Foundation, 6 vols., New York, 1909–14. In general it is to the writings of social workers, and particularly to those who have been connected with settlement houses that we must go for much of our information about urban social conditions. The works of R. A. Woods, Jane Addams, Mary Simkhovitch, and Grace Abbott stand out prominently in a long list. Of necessity their attention is given almost entirely to the immigrants and the very poor. To this type of literature must be added some of the volumes in the series on Americanization, edited by Allen T. Burns and published at New York 1920–22. Munro's *Bibliography of Municipal Government*, pps. 372–79, gives a number of references to articles and books of the same general type.

In *The Process of Government* by A. F. Bentley, Chicago, 1908, will be found some interpretation of group activities and pressures in municipal politics, but there is no adequate monograph on the subject.

On the neighborhood as a factor in local politics reference may be made again to the work of McKenzie, and to R. A. Woods, *The Neighborhood in Nation Building*, Boston, 1923. Much keen thinking on the subject is evidenced also by Miss M. P. Follett's *The New State*, pp. 189–257.

CHAPTER VIII

THE MUNICIPAL ELECTORATE

HISTORY OF THE SUFFRAGE IN AMERICAN CITIES

"A corporation," says the judge in an eighteenth-century English decision, "is properly an investing [of] the people of the place with the local government thereof." [1] The learned judge expressed the ideal far better than the practice. In point of fact at the time he wrote English cities were rapidly falling under the control of select groups of men who in some cases numbered but a small percentage of the population. At that time in England men and women were not given the right to vote in the local affairs of the place in which they resided merely because they were human beings and subjects of the king and had local residence. On the one hand, local residence was not an absolute requirement. A varying number of persons were made "freemen" or members of a municipal corporation who had no residence within it, while many municipal corporations would have been hard put to it to tell what boundaries defined their jurisdiction. On the other hand, resident men obtained the "freedom" of or membership in the borough in various ways, while a great number of others perhaps could not obtain membership at all. One obtained membership because he was a "freeholder" or property-owner within the borough; another because he had served a seven-years apprenticeship to some freeman therein; still another because he was the son of a freeman or had married the widow or daughter of a freeman.[2] There were places also where one could purchase freedom of the borough, and in many towns the members of the corporation, like the members of a club, had the power to select additional members upon such terms and conditions as they saw fit. The ancient ceremony of conferring the freedom of the city upon distinguished visitors is still continued in a number of places, and this freedom is supposed to be the highest honor in the gift of the

[1] Cuddon *v.* Eastwick (1704), 1 Salk. 192; reprinted in Beale, *Cases on Municipal Corporations*, p. 1.

[2] Webb, *English Local Government: The Manor and the Borough*, I, pp. 292–302.

borough. Indeed, and it is important to bear this in mind, there were no national laws upon this subject. Each borough corporation regulated the size and makeup of its membership very much to suit itself, in accordance with its charter and in some cases even in violation thereof.

With the growth of the factory system toward the end of the eighteenth century there came a rush of population into many towns, corporate and unincorporate. In some places the incomers were enfranchised, but in many others the members of the corporation refused to share with them the powers of local government. The towns came to be divided into the great mass of non-members on the one side, and on the other the small body of old residents who had the complete power of local government over the place. The latter group became in some places more exclusive as the years went by until at the beginning of the nineteenth century approximately three-fourths of the English boroughs consisted of and were governed by "close corporations." [3] These were small bodies of men, called the "Court of Common Council" or the "Mayor and commonalty," who held in their hands the entire power of local government, who elected the mayor from among their own number, and who filled vacancies in their ranks by their own vote.

It was under this vicious and undemocratic system that the government of cities finally reached so low an ebb as to constitute a national scandal. Parliament was at last compelled to take a hand in their affairs. After careful investigation it passed in 1835 the great Municipal Corporations Act which put the control of most of the principal English boroughs into the hands of the local householders. It was this act which marked the official beginning of the movement to make English city government both democratic and efficient.

The English colonies in America received their first institutions as importations from the mother country. There were other influences as well, such as that of the Dutch in New York, but it was in the main the English who molded our first political systems. The boroughs of England at that time were not incorporated to serve as mere agents of the central government in the local administration of central affairs. On the contrary, they were little groups of local residents who, to enable them to solve certain local problems in which the central government then had no substantial interest, were granted special

[3] Webb, *English Local Government: Statutory Authorities for Special Purposes*, pp. 371–84.

privileges in the form of sources of revenue and certain powers of local government. At law they were as yet hardly distinguishable from private corporations. No theories of democracy were involved in their government. The political equality of men was yet to be established. The English people, but slowly emerging from feudalism, were not easily shocked at the thought of the few governing the many. Hence it was that membership or the voting right in the boroughs, both in England and in the colonies, was restricted to those who were able to show the desired interest or "stake" in the community, a conception similar to that of holding stock in a business corporation to-day. Manhood suffrage was out of the question. The colonial governments laid down no general rules whatever giving all men the right to vote in local elections. This was a matter to be regulated by each charter and by the local governing body.

The colonial boroughs presented the same varieties of voting qualifications as were to be found in English boroughs at the same time.[4] In some cases several different qualifications existed side by side in the same borough. The "freemen" constituted, perhaps, the most numerous single class of voting members in the average colonial borough,[5] but to be a freeman meant much more than being merely a voter. The colonial boroughs, like the English, were incorporated largely for the exercise of certain trade privileges. To-day we would consider it arbitrary and unjust, contrary to the Fourteenth Amendment, to deny to any person, however lowly, the privilege of carrying on a lawful business. Even persons who are incapable of becoming citizens of the United States, if legally resident here, must receive the equal protection of the laws in carrying on a legitimate industry, but such was certainly not the case in American colonial boroughs two centuries ago.[6] Thus it was not every man who resided in the town who was permitted to become a freeman. One had to apply for corporate membership or freemanship, pay certain fees, and then await the pleasure of the corporation. Sometimes the local court or council was liberal in its policy of conferring freedom, but at other periods it could be very strict. Certain classes, such as apprentices and paupers, were usually

[4] McKinley, *The Suffrage Franchise in the Thirteen English Colonies in America*, pp. 482–83 (and see index for names of boroughs); Fairlie, *Essays in Municipal Administration*, pp. 60–67.

[5] Of course in a broad sense all persons who had the voting privilege were called "freemen."

[6] Edwards, *New York as an Eighteenth Century Municipality*, pp. 85–92; Fairlie, *Essays in Municipal Administration*, p. 61.

excluded from the privilege entirely, while on the other hand, owners of property of a certain description or of a certain value in the city, were entitled to vote as "freeholders" whether resident in the city or not. Certain other groups were, also, in some cases permitted to vote, such as householders in Burlington and Trenton, New Jersey; and at one time in Albany the suffrage appears to have been widely extended.

On the whole it is the conclusion of authorities that the borough franchise in the American colonies was more liberal than in England.[7] The difference was one of degree rather than of kind. Three borough charters provided for "close corporations." That is to say, in these places (Philadelphia, Annapolis, and Norfolk) the council members themselves constituted the corporation and filled by appointment all vacancies in their ranks. Other residents, no matter how numerous they might be, had no part whatever in the election of the corporate officers. In the other boroughs, furthermore, the tests usually applied were those of property-ownership or vocation. One must be either owner or producer to be a voter, since the corporation was considered, as we have said before, essentially a private corporation for the promotion of local business interests and the administration of local business privileges.

THE LAW OF THE ELECTIVE FRANCHISE

We can understand the suffrage requirements in American cities to-day only when we realize how complete a revolution has been wrought in the underlying theory of municipal corporations. For all practical purposes they have ceased to be private corporations and have become public. The stress in the law is no longer upon their privileges but on their public duties. It would be impossible to-day to have the legal conflict which raged in the seventeenth century in England when it was argued that the king could not revoke a borough charter even where the corporation had committed a crime. Our courts have in some cases gone so far as to say that a municipality is a "mere subdivision of the state for purposes of municipal rule." Some court decisions, still speaking the language of two centuries ago, assert that a municipal corporation has some private as well as some public characteristics, but the private features have in reality so changed in character as to make it hard for the best judges to point out in what respects they are private. We no longer speak to-day of

[7] Fairlie, *Essays in Municipal Administration*, pp. 61–64; McKinley, *The Suffrage Franchise in the Thirteen English Colonies in America*.

"membership" in a municipal corporation. There is no longer any ceremony upon the admission of members, and no one ever takes an oath of fealty to the corporation as such. Indeed, even the city officials, in taking the oath of office, are generally required to swear only to support the state and federal constitutions.

Thus it comes about that to-day the voting "members" of a municipal corporation are, as a general rule, merely those voters of the state who happen to be resident within the city limits. Indeed the constitutions of a great many states now declare that one who has the qualifications of a voter in the state is entitled "to vote at all elections" occurring within his district. A single registration list usually suffices for both state and municipal elections. In olden days one was, in most cities or boroughs, *first* a voting member of the corporation, and *secondly*, as a result of the first, a voter in national or colonial affairs. To-day one is *first* a voter of the state and as a result of that is *secondarily* a voter of the city. Thus have municipal affairs been subordinated to those of the state.

It is the general rule, then, that all persons who are qualified by the state constitution to vote at all may vote in local as well as in state elections, and that all persons not so qualified may not vote in either class of elections. But we must recognize certain important exceptions to this principle. In Illinois it has been held that the constitutional provisions stating the qualifications of voters apply only to the election of so-called "constitutional" officers, or those set up in the constitution, as distinguished from "legislative" officers, or those created by statute. Thus while the constitution did not then authorize women to vote generally, the legislature in 1913 passed the so-called Woman's Suffrage Act which permitted women to vote in a whole series of elections of a non-constitutional character, including school and city elections.[8] In Ohio under the municipal home rule provision of the state constitution (Art. XVIII) a city was also held to be within its rights in conferring the right of suffrage for municipal purposes upon women, although women were then without the right to vote generally in Ohio.[9]

The Illinois and Ohio cases illustrate the manner in which the voting class for municipal elections may possibly be enlarged by legislative or municipal action. But by the same sign it might also be nar-

[8] Illinois Laws 1913, p. 333; Scown *v.* Czarnecki (1914), 264 Ill. 305; Alberts *v.* Town of Danforth (1917), 281 Ill. 521.

[9] State *ex rel.* Taylor *v.* French (1917), 86 Ohio St. 172, 117 N. E. 173.

rowed down. In Nevada, for example, it has been held proper for the legislature to provide that only taxpapers may vote upon the question of issuing city bonds to purchase a waterworks. A legal voter who was not a taxpayer felt aggrieved that he should be excluded from voting. He pointed to the Nevada constitutional provision which says that all persons having certain prescribed qualifications "shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election." But his protest was in vain. It was held by the court that in Nevada the legal voter may vote for officers and on questions of a "governmental nature," but that the constitutional provision has no reference to voters upon questions involving the private or "proprietary" functions of cities, and providing a public water supply was held to be a private or proprietary function.[10]

In the three states of which we have just spoken changes in the local suffrage qualifications were brought about by mere legislative action. There are several other states in which the constitution itself expressly establishes or authorizes qualifications for the local suffrage different from those prevailing in state elections. In Rhode Island, for example, where the property test for electors in state elections has not been an absolute and exclusive test since 1842 it continues to be required of voters participating in the election of city councils and in the adoption of local financial measures.[11] In Virginia the legislature may by special act establish for voters in any county, city, or town a property qualification not exceeding $250, while the Mississippi legislature has the broad power to prescribe for municipal voters qualifications in addition to those required of other electors.[12] There are other examples of this sort of thing, but we have given enough to illustrate the point. Taken all together the exceptions are sufficiently numerous, but they do not vitiate the general principle that one who wishes to vote in the elections of a city must first qualify as a voter under the state constitution.

In popular theory there have been and still are in America, as in other democratic countries, two conflicting views concerning the elective franchise. One theory is that all normal adult persons have a "natural right" to participate in the public affairs of the society of which they are a part. The other and opposing view is that the func-

[10] Carville *v.* McBride (1922), 45 Nev. 305, 202 Pac. 802.

[11] R. I. Const., 1842, art. II, sec. 1; Amendments, art. VII, sec. 1.

[12] Va. Const., 1902, art. II, sec. 30; Miss. Const., 1890, art. XII, sec. 245.

tion of voting is so important that only those who are specially qualified should be permitted to perform it. Throughout our history these two views have been in sharp conflict one with the other.[13] The first view stresses the *rights* of men, and often asserts their *equality* in ability. The second view emphasizes the *responsibilities* of the voter, and asserts that there are *inequalities* in the abilities of men to perform this high duty.

The present suffrage laws represent a compromise between these two opposing views. The doctrine of the natural right to vote has to its credit three signal victories in our history. By the time of the Civil War it had cut away most of the old property and religious qualifications, and had established in most of the states almost complete white manhood suffrage, which in a number of states came to mean the right even of foreigners to vote. In 1870 negro citizens were given the legal right to vote on the same terms as white citizens, by the Fifteenth Amendment; and fifty years later the restrictions against women were abolished by the Nineteenth Amendment. The other doctrine has also had many successes, but none so striking or sweeping as those of the rival doctrine. It has worked in the direction of establishing such tests as citizenship, literacy, a period of residence, adult years, and others which are designed to prove fitness.

Legally, of course, the elective franchise is a privilege which is conferred by the state and may be taken away by it. It is a civil privilege, existing only in a civil society and under definite legal regulations. If this were not so, an election could hardly ever be an orderly procedure, and might be anything from a farce to a riot. No person has an inherent or "natural" right to vote. Voting is a step in the process of democratic government, a step in which the people through a selected group of electors, express an opinion upon the candidates and questions put before them. The privilege and duty of voting is, therefore, of inestimable importance, in its mass effect perhaps fully as important as the combined actions of all civil officers and employees. It is to be exercised, therefore, only in conformity with law by those whom the law designates as fit for this important function.

Under our system of government it is the states which determine the suffrage qualifications. The federal constitution provides that "the right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of

[13] Holcombe, *State Government in the United States*, pp. 155–58; Porter, *A History of Suffrage in the United States* (see index).

race, color, or previous condition of servitude," or "on account of sex." [14] It will be observed that these regulations are merely negative. No state may legally go contrary to these prohibitions, it may not discriminate against negroes as such or against women as such, but in all other important respects each state may regulate the suffrage qualifications within its own limits to suit itself.

In the following pages we summarize briefly the present suffrage provisions of the state constitutions.[15]

ACTUAL SUFFRAGE QUALIFICATIONS

Age. It is the rule in all the American states that a voter must be twenty-one years of age.[16] This is not the rule in all countries, however; English women may not vote until they attain the age of thirty, whereas in Italy under a recent electoral law war veterans were permitted to vote at eighteen. The age twenty-one is recognized in American and English law as the point at which one ceases to be legally an "infant" and becomes an adult person of full legal competency. The electoral law merely conforms to the ordinary law.

In actual operation this uniform and fairly low age limit serves to give the cities relatively a larger number of potential voters per thousand population than are to be found in the rural districts. This is true because the cities attract so many young and middle-aged persons away from the farms and from foreign countries, although the foreign born do not immediately become potential voters. It would seem, therefore, that cities should have a slight advantage over country districts in state-wide elections, but this is an advantage which actually does not exist, for reasons to be observed later, and if it did exist it would usually be outbalanced by a legislative apportionment favoring rural districts.

Sex. We have already referred to the fact that the federal constitu-

[14] U. S. Const., Amendments 15 and 19. See also Amendment 14, sec. 2.

[15] These provisions will be found indexed in the *Index Digest of State Constitutions*, 1915, and printed at length in Kettleborough, *The State Constitutions*, 1918. Unfortunately both of these works are already somewhat out of date.

[16] The common law as a general rule recognizes no fractions of a day. Consequently a person is presumed to be twenty-one years old throughout the entire twenty-four hours of the *day before* his twenty-first birthday. In some states, however, the common-law rule has been expressly abrogated, and one does not become twenty-one until his twenty-first birthday has arrived. 20 *Corpus Juris*, 67. One who expects to become of age on or before election day may register in advance.

tion now forbids the states to deny any person the right to vote on the ground of sex. What this amendment, adopted in 1920, really means is that women may not be denied the right to vote merely because they are women, for of course no American state ever denied men the right to vote just because they were men. Long before the amendment was adopted a number of states had already given women the voting privilege generally, and still other states had authorized women to vote in school, or school and library, or local option elections. But in 1920 all of these special provisions were made practically obsolete by the federal amendment which placed women on a substantial equality with men in all elections.

The result of this constitutional change was particularly noticeable in cities, where there are relatively more women than can be found in country districts. In some cities the number of potential voters was more than doubled. As we have said above, the women enfranchised in cities included some of the most able and intelligent to be found anywhere. A great many of them have a deep interest in and a real grasp of municipal affairs.

Race. Distinctions among voters based on race, color, or previous condition of servitude are also forbidden by the federal constitution. There is great difficulty, however, in making people see that this constitutional provision does not positively guarantee the right to vote to all people of non-white races. The Chinese and Japanese, who are numerous in some of our western cities, are, if born abroad, incapable of voting because the law does not permit their naturalization. Negroes, on the other hand, although generally permitted to vote in northern cities, are usually excluded from voting in southern cities where their numbers are relatively much greater. The latter result is accomplished not by direct legal prohibition, for that would be unconstitutional. The so-called "grandfather clauses," for example, which formerly existed in several constitutions in the southern states, and which aimed to put special burdens upon those applicants for registration as voters whose forebears had not been entitled to vote before the Civil War, have been declared unconstitutional.[17] It is not to be understood, however, that the invalidation of the grandfather clauses had the result of immediately enfranchising all negroes. The contrary is true. Despite all efforts in their favor, negroes are still generally without the franchise throughout those regions where they are most

[17] Guinn *v.* United States (1915), 238 U. S. 347; Myers *v.* Anderson (1915), 238 U. S. 368; Dodd, *State Government*, pp. 456–58.

numerous.[18] Everywhere in the United States the electorate is overwhelmingly of white stock.

Residence. In the early part of our history a voter was not necessarily required to live in the place where he voted. If he had a stake in the community, some tangible attachment to the place or membership in the corporation, his vote was as good as that of any other person, no matter where he lived. At a later date when property tests were abolished, and the electorate increased rapidly due to the admission of unpropertied classes and foreign-born persons, it became easy to commit wholesale frauds by the colonizing of voters in doubtful cities or districts. To prevent such malpractices laws were enacted and constitutions amended to require a more definite and extended period of residence not only in the state but also in the county or city and in the voting district. Such enactments provided a substitute for the older tests of a stake in the community. To enforce them was difficult, however, in the absence of general civil registration, and was almost impossible where the election authorities were both dishonest and partisan. There followed, then, in many places and particularly for the larger cities, the enactment of provisions for bipartisan election boards and the registration of voters in advance of the election, though this movement did not become general until after the Civil War.

The term "residence" as used in this connection has a somewhat technical meaning. In a legal sense residence depends upon both (a) certain facts, and (b) intention. For voting purposes in this country a man is presumed to have only one residence. If this were not so some men might have two or more votes while their neighbors had but one,—a form of political inequality which is obnoxious to the American mind. Hence it is necessary for a man who has both a town house and a country place, in each of which he lives for a certain part of the year, to make up his mind which of the two is to be his legal residence. His own intention is an important element, then, in determining where he

[18] Dodd summarizes the interesting provisions of the Louisiana constitution of 1921 touching upon suffrage qualifications. *Op. cit.* F. R. Kent, in his book *The Great Game of Politics*, 1923, at pp. 314–19, attributes the practical exclusion of negroes from elections in the south to the following: (1) The "white" primary, for in some southern states only whites may participate in primaries; (2) The poll tax; (3) The educational qualifications as enforced by white election judges; (4) The selfishness of southern white Republican leaders who do not want the negroes to participate because of the fear that the negroes will wrest party control and spoils from their hands; (5) The strength of white public sentiment against negro participation; (6) The habit of not voting; and (7) The futility of voting.

shall cast his vote. He need not in all states intend to keep this residence indefinitely, but he must at least be clear as to his intention for the time being.

Furthermore, intention alone is not sufficient. Residence cannot be created by mere intention in a place where one has no tangible evidence of an abode. A person should have a rented room, or a habitable house or apartment, or a privilege of returning to one's family or to some relative's home, to constitute the place an actual residence. Actual continuous habitation of the place is not usually required, for traveling salesmen and many classes of workmen must be continually moving about and it is not the purpose of the law to exclude them from the suffrage. One practical test is that of the permanent mailing address. Another is suggested by the question, "What place do you call home?" One who has enlisted in the navy from Illinois may be stationed in California, but that does not make the latter state either his home or his voting residence. A student, likewise, may go from Pennsylvania to Connecticut to attend Yale without gaining residence in the latter state or losing it in the former.[19] In a sense we may apply here the old rule as to domicile and say that a man's residence for voting purposes "is that place from which going he is on a journey, and to which returning he is at home." [20]

[19] For the benefit of soldiers, sailors, and other classes of persons who are unavoidably absent on election day on lawful business, some of the states have enacted absent-voters laws which are designed to permit a lawful voter to mail his ballot to the election officers in his own precinct on or before the day of election. Brooks, *Political Parties and Electoral Problems*, pp. 413–18; Dodd, *State Government*, p. 470.

[20] The Ohio Election Law, sec. 4866, gives the following typical set of rules for determining the residence of persons offering to vote:

Ohio Election Law, Section 4866. All judges of election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable:

1. That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

2. A person shall not be considered to have lost his residence who leaves his home, and goes into another state, or county of this state, for temporary purposes merely, with the intention of returning.

3. A person shall not be considered to have gained a residence in any county of this state, into which he comes for temporary purposes merely, without the intention of making such county his home.

4. The place where the family of a married man resides shall be considered and held to be his place of residence, except where the husband and wife have separated and live apart, then the place where they resided at the time of the separation

The residence requirement is not the same in all states.[21] In Maine the voter is required to have resided in the state only three months; in ten states the required period is six months; in thirty-one states it is one year; and in six states, including Rhode Island and five southern states, the period is two years. There is also in practically all the states a requirement of local residence in the county, in the town or city, and in the ward or precinct. Depending usually upon the general law of the state there is required residence in the city of from ten days to one year. The precinct residence requirement varies from one day to one year, the majority of the states specifying thirty days or less of continuous residence in the precinct before the election.

Adequately enforced a residence requirement has the effect of limiting and stabilizing the voting population. "Floaters" are prevented from voting in large numbers because of the freedom with which they move from precinct to precinct, from ward to ward, and even from city to city. When we remember, also, that registration of voters is more generally insisted upon and more strictly enforced in large cities than in smaller towns and rural districts, it must appear that many potential voters in cities are prevented at almost every election from becoming voters in fact.

shall be considered and held to be his place of residence, unless he afterward, and during the time of such separation, remove from such place, in which case the county, township, city or village in which he resides the length of time required by the provisions of this chapter to entitle a person to vote, shall be considered and held to be his place of residence.

5. If a person remove to another state with an intention to make it his permanent residence, he shall be considered to have lost his residence in this state.

6. If a person remove to another state, with an intention of remaining there an indefinite time, and as a place of present residence, he shall be considered to have lost his residence in this state, notwithstanding he may entertain an intention to return at some future period.

7. If a person remove to the District of Columbia or other federal territory to engage in the government service, he shall not be considered to have lost his residence in any county during the period of such service, and the place where such person resided at the time of his removal shall be considered and held to be his place of residence.

8. The mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention.

9. If a person go into another state, and while there exercise the right of a citizen by voting, he shall be considered to have lost his residence in this state.

10. All questions of the right to vote shall be heard and determined by the judges of election.

[21] For a convenient summary of these requirements see *The World Almanac*, 1924, p. 879.

Because of this fact much of the advantage which cities have over rural districts in the relative number of potential voters to total population is actually lost at the time of the election. Indeed some calculations made by the author for the state of Minnesota indicate that per 1,000 people the country districts cast more votes in state and national elections than do the three principal cities of the state, Minneapolis, St. Paul, and Duluth.[22] Of course the cities have relatively more unnaturalized foreign-born persons, although the rural districts of Minnesota have a high percentage also. But the most important fact is that many city voters either fail to establish voting residence, or fail to get registered. In the rural districts and small towns of Minnesota personal registration of voters is not required.

Citizenship. Membership in the body politic of the nation would seem to be so essential to the exercise of the suffrage on public questions that it is surprising only that we should have to discuss the question at all. We must remember, however, that the federal constitution does not require that voters be citizens. Furthermore, in the territories west of the Alleghenies taken over by the United States from time to time after 1783 were many inhabitants of English, French, Spanish, and Mexican blood who could not claim American citizenship. The organic acts passed by Congress for these territories usually recognized the just claims of these persons by permitting all settled "inhabitants" to vote in local elections.[23] This became more or less the established policy in the central west, and when the time came for the new states to compete with one another for German, Scandinavian, and British settlers, the offer of the franchise was an inducement not to be ignored. In 1848 Wisconsin definitely provided for alien suffrage in her new constitution, and thus enabled "declarants" in that state to vote not only on state and local affairs but also in national elections.[24] Other states were not slow to meet this competition. At one time or another not less than twelve states have made it possi-

[22] At the election of 1920, which aroused great interest both in city and in country, the total vote in the three cities was 31.9% of the city population, whereas outside of the cities the vote was 34.1% of the population.

[23] This policy began with the Northwest Ordinance, 1787, sec. 9. By exception the organic acts of Missouri (1812), Wisconsin (1836), and Iowa (1838) limited the suffrage to citizens.

[24] A declarant is an alien resident in the United States who has declared his intention to become an American citizen. He is in no sense a citizen, and he may never become one.

ble for declarants to vote in their elections.[25] In recent years this number has been reduced, but even now three states which contain important cities, Indiana, Missouri, and Texas, and one other, Arkansas, have provisions authorizing alien suffrage.

The fact that other states require citizenship of voters is not to be taken as meaning that aliens have in all cases been rigidly excluded from voting in such states. By means of naturalization frauds, impersonation, and other malpractices, openly winked at by the authorities acting in collusion with the party bosses, aliens, both singly and in crowds, have been permitted to vote without legal right.

But this is not the place to discuss violations of law. It will probably not be many years before all the states require citizenship of voters. Along with this restrictive movement will probably go an insistence that foreigners who settle down among us give earlier attention to naturalization than has previously been the case. The law specifies a minimum residence in this country of five years, with the last year of this period one of continuous residence in one state. There is good evidence, however, to support the statement that up to 1914 ten to twelve years was more nearly the average period of residence before final papers were taken out.[26] In other words, when left to themselves, aliens do not rush through a hasty naturalization in order to get themselves immediately upon the polling books. It is only when pressure is put upon them either by party workers or by Americanizers that they quicken the process. This furnishes us an interesting commentary upon the Americanization movement, the result of which must be to bring a considerable number of foreign-born persons into full citizenship and participation in elections before they would normally have come into that status of their own volition. Since the foreign born are congregated mainly in cities, it will be in the latter that the principal influence of the newly Americanized voters will be felt.

Literacy tests. Most Americans would probably agree that a person is not qualified to vote intelligently unless he can read simple English with understanding. It is a fact, however, that less than one-third of the states require all voters to be able to read; [27] and even as to these

[25] The states which have abolished alien suffrage provisions include Colorado, Kansas, Michigan, Minnesota, Nebraska, Oregon, South Dakota, and Wisconsin.

[26] Gavit, *Americans by Choice*, pp. 236–47.

[27] In addition, in Colorado the legislature may and in North Dakota it shall establish literacy tests.

states it is not wholly unfair to say that in most cases the literacy test was introduced as a method of excluding some class of voters which was disliked by the dominant class for reasons entirely apart from its illiteracy. The main purpose was undoubtedly to exclude the negroes in one group of states, and to exclude some of the foreign born in another group. The literacy test was hit upon as an effective means of accomplishing the result, but in order to keep the test from excluding illiterate persons of the dominant class or party such exceptions were made where possible as would give the election judges and registrars of voters a fairly free hand in applying the test.

In the north the literacy tests began with that embodied in the Massachusetts amendment of 1857 which provides that "no person shall have the right to vote, or be eligible to office under the Constitution of this Commonwealth, who shall not be able to read the Constitution in the English language, and write his name." [28] Exceptions were made in favor of persons physically disabled as well as in favor of persons who then had the right to vote. The California, Delaware, and Maine provisions are similar to that of Massachusetts. The New York provision, adopted in 1921, declares that "After January 1, 1922 no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English." [29] It will be observed that the New York provision applies only to new voters and that it sets up a more difficult writing test than that enforced in Massachusetts. In Connecticut and Wyoming the test is merely that of reading; in Washington the voter must "be able to read and speak the English language."

Mississippi in 1890 adopted the first literacy test enforced in the south. It provided that "On and after the first day of January, A. D. 1892, every elector shall, in addition to the foregoing qualifications, be able to read any section of the constitution of this State; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof." [30] No exceptions were specified but clearly the election authorities were given a wide latitude in applying the test. Other southern states, including Alabama, Louisiana, Oklahoma, and North and South Carolina, followed the lead of Mississippi, but they also went farther in that they required ability both to read and write a section of the constitution in English.

[28] Mass. Const., 1780, Amendments, Art. XX.
[29] N. Y. Const., 1894, Amendment to Art. II, sec. 1.
[30] Miss. Const., 1890, sec. 244.

The educational tests thus briefly summarized have been enforced now for many years in several of the states. Strictly and impartially enforced, these requirements should have produced several desirable results. In the first place more of the foreign born and of the illiterate native born should have sought night schooling in states where the literacy test is enforced than elsewhere. Perhaps this has been the result, but if so the writer has failed to find any statistical evidence to prove it. A second result should have been a slight but appreciable increase in the intelligence of the vote in the states where the literacy test is enforced. All other things being equal the vote in New Hampshire should be more intelligent than that in Vermont, the vote in Seattle, Washington, more intelligent than that in Portland, Oregon. There is, of course, no evidence to warrant such a conclusion. If they vote at all the illiterates would seem to divide upon candidates and public questions in about the same proportion as their more fortunate neighbors. Indeed the percentage of illiterate whites in the population is so small that their votes could not, in most cities, have any very appreciable effect on the total vote, whereas the illiterate negroes, where they are most numerous, would perhaps be effectually excluded from the suffrage by other requirements.[31]

The chief defect in the literacy test for voters has been the failure to bring about honest enforcement. Where personal registration of voters is required the literacy test is usually applied at the time of registration, but in other places it is hastily given at the time of the election. Who is to decide whether an applicant for registration can read, and upon what basis is he to rest his decision? If this matter be left as it generally is, to the ordinary judges and clerks of elections there are bound to be some malpractices. The law frequently requires the appointment of three judges or registrars in each precinct, not more than two of whom shall be of one political party. In practice this has frequently meant two very ardent workers for the majority party, and one lukewarm or indifferent member of the principal minority party. The opportunity for political manipulation offered by such a system must be apparent to all. Stories are told of malpractices under the literacy tests which would be highly humorous if

[31] It is sometimes said that the ignorant always vote whereas the intelligent frequently neglect this elementary obligation of citizenship. This can hardly be true for the act of voting is itself a test of real intelligence, and no matter how well "educated" one may be, his neglect of his duty to vote is an indictment of his intelligence.

they were not so serious. The college graduate has been excluded while the "hobo" and the "bum" have been admitted to the exercise of the suffrage.

In New York state a step has been taken which may point the way to the fair and impartial enforcement of the literacy test. As pointed out above, the test in that state applies only to those who become voters after January 1, 1922. Under an act passed in 1923 a new voter in that state may present to the election inspectors as evidence of his literacy either a certificate or diploma showing he has completed the work of an approved eighth-grade elementary school or of a higher school in which English is the language of instruction, or he may present a certificate attesting to his literacy issued by the board of regents of the state.[32] The genuineness of such certificate is, of course, subject to challenge; and the inability of the applicant, except in case of obvious physical incapacity, to sign his name in the poll-book, is to be conclusive proof of his inability to pass the test. What is important in this new law is the fact that the test of literacy is to be given by the state school authorities, and not by the election inspectors. The educational test is to be applied by the educational authorities.

The rules adopted by the board of regents for applying the test appear to be simple and efficacious. The local superintendents of schools are to be the agents of the board for this work. Certificates of literacy are to be issued to all persons who have successfully completed the sixth grade in the public day schools of the state, or who present credentials showing the completion at some school in the state of a course of study in reading and writing English equivalent to the sixth grade, or who pass the "New York state regents literacy test," as well as to those whose physical disabilities may prevent them from meeting the requirements. The examinations take place on days set before each registration either in the school buildings or in other places designated by the local superintendents. It is the regents themselves who determine the nature of the examinations. Only time and experience can tell how well this system will work, but an excellent start seems to have been made.

Time should tell, also, whether a simple literacy test goes far enough in determining the fitness of the voter. The real question, says Bryce, "is not whether illiteracy disqualifies, but to what extent literacy

[32] Laws of N. Y., 1923, ch. 809.

qualifies." [33] "Book-larnin" may have no great value to the voter if, as he says, "in these days of ours reading has become a substitute for thinking." Where an earlier generation voted, perhaps, according to the dictates of their employers or the bidding of local leaders, perhaps modern voters cast their suffrages even more blindly according to the advice dinned constantly into their ears by newspapers representing no man knows what interests. The people living in cities, with their present equipment of evening-schools, should have no difficulty in qualifying under any of the simple literacy tests herein discussed. It may be, however, that another generation will demand the application of a still more exacting test than that now applied in any of the states, a test, in fact, of true public capacity.

Property ownership and tax payment tests. To-day but one state in the north provides a property test of general application. This is Rhode Island which requires that any person voting for members of a city council or upon any local taxing or expenditure measure must "within the year next preceding have paid a tax assessed upon his property" in the city or town "valued at least at one hundred and thirty-four dollars." [34] In several southern states, also, the constitutions speak of property qualifications, but these are alternative rather than absolute requirements. A number of state constitutions, on the other hand, absolutely forbid property tests for the suffrage, and still others admit property tests only in case of voting upon tax levies and debt measures. In the highly urbanized states of the west, the north, and the east, except Rhode Island, property tests for the suffrage do not exist.

In several northern states, as well as generally throughout the south, the payment of poll taxes or other taxes is a prerequisite, absolute or alternative, to the suffrage. No statement is required as to the purpose of such provisions in the south. The tax-payment test is a substitute for property ownership as an evidence of attachment to or interest in the community, and on this basis a cogent argument can be presented for it. In the south it succeeds, along with other tests, in excluding most of the negroes from participating in elections. In the north, on the other hand, the tax-payment requirement has met with little success in accomplishing its purpose. Parties have been too anxious to

[33] *Modern Democracies*, I, ch. 8. And see the remarks in Goodnow *Municipal Government*, 1909, pp. 36–37, 40, quoting J. A. Hobson on the superficiality of the townsman's learning.

[34] R. I. Const., 1842, Amendments, Art. VII, adopted 1888.

get out the vote, and they have brought pressure to bear either to have the requirement relaxed or to have the taxes abated, and in case of dire need they have not failed to pay poll taxes out of the party funds.

A century has passed since the American states generally abolished the requirement that a voter must be a property owner. The revolution which accomplished this result was almost bloodless, and it has long been forgotten by the great mass of the people, yet very few constitutional changes have had more far-reaching results than this one. The mother country, England, continued to be governed by an aristocracy for many years. It was only by slow and painful steps that the English achieved more democracy, and not even to-day may all English men and women of full age vote in municipal elections. The American states, on the other hand, became democracies of men nearly a century earlier, when property and tax-paying tests generally went by the board. Thus through their most trying years of growth and expansion American cities were governed by electorates composed of men who had no necessary attachment to the places in which they lived. The solid business man and home owner had but one vote, and it had no more value than that of the "floater" who was here to-day and gone to-morrow. No one can fully understand American municipal institutions in the nineteenth century without a full comprehension of this fact.

Loud were the wails and many were the remonstrances of conservative leaders when they saw their cherished bulwarks of authority threatened. No doubt there was much truth in some of their Jeremiads. "Is not property desirable?" was the question asked in the New York constitutional convention of 1821. "Is it not worth protection? All that goes to embellish or render society valuable, depends upon it. Churches and hospitals are erected, and schools established by property, and every government that has the interest and prosperity of the governed at heart, must feel bound to protect it." [35] And in the Virginia Convention of 1830 when the question came up of retaining the freehold qualification it was argued "that, in Virginia, the great mass of intelligence and virtue resides in that stout and generous yeomanry, the freeholders of this land; that to them belongs not only all the real property of the Commonwealth, but almost all of the personal property also; that they are the class, who feed, who clothe, who educate all classes; who hold the greatest stake in society; who are the only persons who have any stake that may not be withdrawn at pleasure, in the twinkling of an eye; who,

[35] *Debates and Proc. of the Convention of the State of New York*, 1821, p. 115.

therefore, have, and actually take, the deepest interest in the public welfare." [36]

"Universal suffrage," said Chancellor Kent, in the New York Convention referred to above, "jeopardizes property, and puts it into the power of the poor and the profligate to control the affluent. Who can estimate the extent to which the effects of this doctrine may be carried? The disproportion between men of property and of no property is daily increasing; and it will be fallacious to expect that our people will continue the same small farmers as our ancestors were in New England, or the Dutch settlers on the Hudson. As our wealth increases, so also will our poor. It has been estimated that one-seventh of all the inhabitants of Paris live on charity, and the growth of pauperism in our own state bears an alarming proportion to the advance of population. What has been the progress of the city of New York? In 1773 it contained only 21,000 inhabitants; in 1821, 123,000 souls! It is evidently destined to become the London of America; and it is no hazardous prophecy to foretell, that in less than a century *that city will govern the state.*" [37]

The arguments here put forward have long since ceased to have any practical effect in the most populous centers of America. It would probably be futile to argue for a return to property qualifications.[38] What we need to consider is the effect upon our municipal institutions of the abolition of such tests. It must be admitted in the first place that municipal government in America passed through some dark and sordid days in the period after the enfranchisement of the unpropertied. American city governments reached a very low ebb in both honesty and efficiency in the decades from 1820 to 1900. Was this due to the abolition of the property test? Perhaps so, in part, yet we must remember that great improvements in cities have come about since 1890 without a return to the old suffrage qualifications. In the eighteenth century when property tests and "close corporations" were the rule in England, city government there had its darkest period. As the franchise was extended from 1832 onward, city government greatly

[36] *Proc. and Debates of the Virginia State Convention of 1829–30*, p. 399.

[37] *Op. cit.*, pp. 115–16. New York abolished the property test in 1821. It had largely ceased to have any effect, for in the city of New York Tammany Hall, under the leadership of Burr, had devised a method of joint ownership of property which permitted a considerable number of persons to vote as coöwners of the same piece of real estate. Myers, *History of Tammany Hall*, 1917 ed., pp. 14, 15; *Debates and Proc. of the Convention of the State of New York*, 1821, *loc. cit.*

[38] But see Cruikshank, *Popular Misgovernment in the United States*, N. Y., 1920.

improved. If we hold the scales even in these two cases, what conclusion must we draw as to the effects of abolishing the freehold test for voters?

The proponents of the property test seem to have assumed that ownership of real property was the best or only test of attachment to stable government, and that there would be a large class of very poor persons, including many utter paupers, who would act in unison to oppress the well-to-do. But America has had great natural resources, and material prosperity without precedent. Despite tremendous immigration, labor has continued to be well paid, not only in money but in purchasing power. After all, a man's attitude upon economic questions is probably determined less by his ownership or non-ownership of a particular type of property than by his income. Then, too, in America many workingmen who do not own real estate do hold stocks and bonds. Many large corporations have encouraged their employees to become shareholders in the business. A new form of property-ownership has sprung up and become widespread which the defenders of the freehold test could not have foreseen.

Good wages, coupled with home-ownership in many cases, and the ownership of stocks and bonds in others, and access to good schools and numerous other privileges, have served to make American workingmen more conservative than their brethren in the old country. Indeed Europeans tell us that our laboring class is distinctly "bourgeois" and not "proletarian" in its economic position and attitude. The communist party makes little or no headway here, while the so-called "socialist" groups which have gained a foothold in some city governments would be classed as of the right-wing of any Socialist party in Europe.

Had the ownership of real property continued to be a suffrage qualification in America, and had it been possible to prevent evasions, our urban electorates would now be much smaller in numbers than they actually are. Home-ownership may be taken as the equivalent of real property ownership, since very few will be owners of real property of any kind who do not also own their homes. In 1920 only two American cities of over 100,000 population had more home-owning families than families which rented their homes.[39] These cities were Des Moines and Grand Rapids, with 51.1% and 50.2% of home-ownership respectively. Seven-eighths of the homes in New York were rented; 73% in Chicago; 60.5 in Philadelphia, the "city of homes"; 61.7% in

[39] Bureau of the Census, *Fourteenth Census*, III.

Detroit; 64.9% in Cleveland; 76.2% in St. Louis; and 81.5% in Boston. In the highly industrialized cities of Massachusetts, Connecticut, Rhode Island, New York, and New Jersey, there was less than 25% of home-ownership. In the borough of Manhattan, New York, only two per cent of the homes were owned by their occupants, *i. e.*, only 10,768 out of 525,154 homes listed. In the southern cities with large negro populations the percentage of home-owners is also relatively small. Generally speaking the cities of the central and far west have the highest percentage of home-ownership; and it is also a general rule that small cities report more home-ownership than large cities. If the suffrage depended, then, upon real property ownership, most of our large cities would be ruled by small minorities.[40]

Registration. In some whole states and in the great majority of cities, registration has become an almost indispensable prerequisite to voting. Where the voter must register personally the registration requirement practically constitutes an additional qualification for voters. On this ground registration laws have been assailed as unconstitutional in several states, but the courts have generally sustained such regulations on the ground that they do not add to the franchise qualifications already laid down in the constitution, but merely provide a means for ascertaining whether a person is properly qualified. The necessity for having a proper registration of voters in large cities in order to prevent fraud in voting can hardly be gainsaid.[41]

Registration systems differ considerably in the burdens which they impose on the voter as well as in the public expense which they entail. Under a system of recurrent personal registration extensively used throughout the middle west the urban voter is required to appear in person once every two years before a board of election judges and clerks serving as registrars to have his name enrolled as a voter. The inconvenience to the voter is considerable. Should he be absent from the city, or confined to his bed, or unduly busy, or merely forgetful of his duties on registration day or days, he is unable to vote at the following election. The expense to the public of having a board of registrars sit in each precinct one, two, or three days before each regular election is considerable. For special or intervening elections there may be special registrations for voters previously omitted with resultant increase of expense. The Chicago Bureau of Public Efficiency makes

[40] As to the relationship between the suffrage, property ownership, and local taxation, see also Ch. XXI.

[41] Brooks, *Political Parties and Electoral Problems*, pp. 383–87.

the assertion that "a registration in Chicago is more expensive than the election which it precedes."[42] At the time of the report quoted the registration expense was over $175,000 for an "intermediate" registration and over $250,000 for a complete new registration. In the six years 1917–22 the city spent over $3,500,000 merely to register voters.[43]

A number of cities in the east, notably New York and Boston, have for a number of years maintained systems of more or less centralized and permanent registration.[44] Similar systems have more recently been established for Detroit, Milwaukee, Omaha, Portland, Oregon, and the three larger cities of Minnesota. The essentials of any such system are, *first*, the keeping of a fairly permanent list of voters, *second*, the creation of a special staff of clerks which is made responsible for preparing and revising the list, and *third*, the relieving of the voter from the necessity of giving constant or frequent attention to the problem of registration. In some cities a voter may register at any time up to a few weeks before the election at some central registration office. Detroit has a complete new registration every four years. In other places a voter is dropped from the lists if he fails to vote during two successive calendar years. In some of the cities under such a registration plan the police are used to check up the lists by house to house canvass before the election. The dangers of fraud and political manipulation are not absent from any system of registration. If a system of permanent registration is installed with a special and permanent staff of registrars, it would seem to be desirable to have the members selected under the merit system, and if the police are to be used for checking registration lists they, too, should be appointed on a merit basis without reference to political affiliations.

THE ACTUAL VOTERS IN CITIES

We have now seen something of the principal legal qualifications of voters in American cities.[45] From these rules it is possible to work out

[42] Chicago Bureau of Public Efficiency, *The High Cost of Elections in Chicago and Cook County*, 1921, p. 9.

[43] Chicago Bureau of Public Efficiency, *A Proposed System of Registering Voters and of Canvassing the Registration Lists in Chicago*, 1923.

[44] Munro, *The Government of American Cities*, 3d ed., pp. 115–19; Chicago Bureau of Public Efficiency, *A Proposed System*, etc.

[45] Such minor legal disqualifications as insanity, conviction of crime, and pauperism need not be discussed here. The student will find it an excellent problem to try to work out a complete and accurate statement of the qualifications of electors in and for his own city or state.

for any city on the basis of census reports and the figures of registration and election returns the proportion of registered and of actual voters to potential voters, as well as the approximate numbers of those excluded by reason of the several disqualifications. First one should put down in a list the various qualifications and disqualifications in force in the particular state: age, citizenship, etc. Starting then with the total population of the city at the last census one subtracts first those under 21, second those over 21 who lack citizenship (if that is a qualification), and so on. Some of the items must be left for conjecture, although close estimates can frequently be made, as for example of those who have not the required residence. The accompanying diagram indicates roughly the manner in which each requirement cuts off some group of potential voters, and how the actual voters constitute only a sort of residuum which does not greatly exceed 25% of the population. As a general rule very few persons seem to be disqualified by illiteracy, while much larger numbers fail to become voters either through lack of citizenship, or through failure to establish proper residence, or through simple neglect to register.[46]

THE POPULATION AND THE VOTERS OF AN HYPOTHETICAL CITY

A. Persons who are qualified to vote, and who actually do vote, approximately 25 per cent of the population.	
B. Registered voters who fail to vote.	These groups excluded from voting mainly by their own negligence or indifference.
C. Qualified persons who fail even to register as voters.	
D. Persons of inadequate residence.	
E. Negroes and others illegally excluded.	
F. Persons excluded by literacy test.	In these cases the persons excluded have less control over the circumstances.
G. Persons excluded by miscell. tests.	
H. Persons of age lacking citizenship.	
I. Persons not yet of age, usually less than 50 per cent of the population.	

[46] Holcombe, *State Government in the United States*, pp. 143–50; McKenzie, *The Neighborhood: A Study of Local Life in the City of Columbus, Ohio*, pp. 156–68, 492–96 (reprinted from *Amer. Jour. of Soc.*, vol. 27, 1921–22).

Who, then, are the voters in our cities? Upon whom does it fall to select the officers of municipalities and to guide their public affairs? Up to this point we have dealt mainly with their legal qualifications. We need now to see something of their actual equipment. Perhaps ninety-seven per cent of them are white men and women, for negroes and persons of other non-white races are effectually excluded except where their numbers are small. Taking the large cities of the country as a whole, not to exceed twenty per cent, and perhaps more nearly fifteen per cent of our voters are foreign born whites, and most of these have been in the United States for more than ten years, many of them for twenty or thirty years. Another twenty per cent are native-born whites both or one of whose parents were foreign born. This leaves about sixty per cent of the voting population to consist of native white persons of native parentage.

In educational equipment the voters of the city have a distinct advantage over their rural brothers and sisters. Most of the college and university-trained people in the country settle down in cities, as do also, no doubt, the majority of those who have completed courses in high schools and technical institutions. On the other hand, they are a far more mobile group than those in the rural districts, less attached to the place, and more preoccupied with their own affairs.

Economically they range all the way from the very poor to the excessively rich, but in the main they are middle class just as in the country districts. Relatively fewer of them, however, own real property and less than half of them own their homes. A large percentage of them are dependent upon others for work. In age they are mainly in the younger and middle years of life. It might be predicted from this catalogue of facts that urban voters would be more radical and less friendly to existing institutions than voters in rural districts. To a certain extent this is true, but it does not follow that they are dangerously destructive of modern institutions. To the reformer they usually appear to be hopelessly set in their ways.

REFERENCES

The best sources of information upon the legal qualifications of voters are, first, the state constitutions, of which the best recent collection is that by Kettleborough, published in 1918, and second the leading digests of the law. See especially *Corpus Juris*, vol. 20, pp. 55–87, and *Ruling Case Law*, vol. 9, pp. 979–85, 1023–46.

In his *Municipal Government and Administration*, 1923, Vol. I, ch. 12, Professor W. B. Munro gives a valuable comparative study of the municipal

electorate in the United States, Great Britain, France, and Germany. In *The Government of American Cities*, ch. 5, he discusses more fully the electorate in American cities. Very valuable also is ch. 14 in Professor R. C. Brooks' *Political Parties and Electoral Problems*, 1923. Professor Kirk Porter's work, *A History of Suffrage in the United States*, 1918, is the best study in its field. Of more general value is Charles Seymour and Donald P. Frary, *How the World Votes*, 2 vols., 1918.

CHAPTER IX

URBAN PUBLIC OPINION AND PARTIES

THE PROCESS OF GOVERNMENT IN CITIES

Government is not a mere mechanism. To describe, to measure, and to gauge the importance of, its different parts or branches is a large part but is not all of the study of government. "Governments are living things and operate as organic wholes," says Woodrow Wilson, and this is a statement with which most students will unreservedly agree.[1] This does not mean that governments are organisms with a natural life and death beyond the control of men. Neither is there a doctrine of predestination as applied to states or to cities. To a certain extent men can control their governments, compelling them to be or to do this or that. Indeed, one of the most helpful ways of looking at government is to see it as a process of controlling and doing things. To do this we must see through and even beyond the mechanism or organism. We must actually see things in operation or in process, studying physiology as well as anatomy. If we then find that some men do actually get things done by government as they wish them done, we may even say that there is an art of government. Those who know this art we call statesmen or politicians or leaders. The material with which they work is the same as that of which the city or the state is composed, namely, the people themselves.

The governmental process in an organized society may be defined as the process of getting things done as public acts by or through public authorities. Society is a set of human forces and relationships. The forces arise out of economic and social conditions primarily, but also from men's ideals, their friendships, their ignorance, their passions, their racial or other prejudices, their religious and moral beliefs, and their views as to their own interests. The groups which set these forces in operation are strong or weak in proportion to the numbers, the intelligence, the earnestness, and the influence and wealth of those who compose them and the effectiveness of their organization. No man could possibly set down all the forces which operate in society or even

[1] *Constitutional Government in the United States*, p. 54.

describe fully the motives which move men to act, although shrewd politicians know many of them and use them to their own advantage. In the governmental process, of which politics is a part, these forces are brought to bear in different ways in order to get some things done and to prevent the doing of others. The art of government is the art of combining and directing the forces in a given society to the accomplishment of a given end. The purpose of government is essentially moral. It is to promote the welfare of the people by utilizing the forces and resources which public opinion considers to be good in order to control and defeat the "unsocial" forces which work to the detriment of the people. Of course the "good" does not always win, nor do men always know what is the good.

The essentials of the normal process of government can be illustrated by a simple example drawn from any city's experience.[2] We shall take the case of the dance-hall problem. The starting-point is this: In a rapidly growing city where there are many girls, factory and office workers, a number of dance-halls have sprung up. Different men and women have invested their money and their time in this business as a means of getting a living and whatever profits can be made in addition. To begin with there is little or no public regulation, and the result is much disorderliness including drinking and immorality. In other words, forces have been set loose which seem to call for social control. From this point on the steps in the process of government can be charted with a fair degree of accuracy.

1. The first step in the process is usually the formation of public opinion. Some person or group of persons has observed the condition, has seen the harmful results, and feels that something should be done about the matter. The facts are published. This is the beginning of the formation of various opinions on the subject. Some extremists demand absolute prohibition of dance-halls. The pulpit and the press resound with declamations on the subject. The more intelligent pastors, social workers, leaders of women's clubs, and others who have an interest in civic affairs, speak for strict supervision and reasonable closing hours. Those who have money invested in, or have some other profit from the business, oppose any interference with it whatever.

[2] Of course, all the steps in the normal process are not always taken. For example, many public actions are taken without consulting public opinion, or even in defiance of it, and sometimes things are done by public officials quite without legislative authority. When not absolutely illegal such acts are at the least contrary to the spirit of democratic institutions.

The latter, as well as some persons who are more disinterested, make contacts with city councilmen and other officials to express their several views. In their attempts to influence official conduct in favor of their various plans of action or inaction, they also visit the party bosses and the lesser political leaders. In the meantime the councilmen find it politically wise to take no immediate action. The whole problem is to them relatively new, and is just passing through the *public opinion stage.*

2. The second step comes when the question is thrown into a municipal *election.* If there were fewer social problems pressing for solution, the dance-hall question might present a leading issue for the voters. Unfortunately many problems come crowding up for decision at the same time. The election is, as nearly always, very much confused. Dance-halls receive little attention in the campaign. Upon being urged to do so by various religious, social, and civic organizations, a number of candidates for the council pledge themselves more or less vaguely to dance-hall regulation. A few of these men are elected. In this, the election stage of the process, the interested voters have, then, succeeded in electing some representatives who are to attempt to carry out some public opinion on this subject. Had the issue been a more outstanding one, every member elected to the council might have taken some stand upon the question.

3. Following the election comes *legislation*, the next step in the process. It may be long delayed, and it may not come at all. Already fearful of the regulation to come, dance-hall proprietors have probably done much to improve moral conditions in their several places of business. Should some dance-hall be the scene of a violent breach of the peace, however, some brawl or shooting affair, public demand for immediate passage of a regulatory ordinance might well become so pronounced and so nearly unanimous as to force the measure through the council in a few weeks time. Various draft measures will first be brought in, each representing some different view on the subject, and these will be referred to a council committee. Public hearings may be had upon the question, reformers, dance-hall proprietors, and others being heard. One of the proposed ordinances will be made the basis for the legislation, some amendments will probably be made in committee, and then the measure will go to the council as a whole. It may or it may not survive this ordeal. If it does it may yet be defeated by the mayor's veto, or may even be set aside subsequently by the courts. Many are the pitfalls into which

proposed ordinances may fall, and pigeonholes into which they may be put. Even the fact that an ordinance has passed means very little. The important question is, what sort of ordinance was passed? Is it a measure of genuine regulation, or is it merely a husk or a sham?

4. Getting the ordinance passed is often the easiest stage in the whole process of city government. City councilmen are anxious to please and must have something to do. The next step is not really a single step at all, but the *interminable process of administration.* It is in a sense misleading to put the term "legislation" over against the word "administration," for the two are entirely different. The former may take but a few weeks. Once done well it may be done for a long time, if not forever, save for an occasional minor amendment. The council may go on at once to other matters. Public opinion, too, although it should remain constantly alert and awake, may, and frequently does, fall fast asleep once the ordinance has been passed. Such cannot be the case with administration, or the enforcement of the ordinance. From the time the measure has gone into effect, night after night, year in and year out, the enforcing department must be vigilant. The policemen and policewomen selected for the purpose must inspect the dance-halls frequently, and must be at their posts every night when the dances occur. They must know the terms of the ordinance, and must see that they are observed. The council, in the meantime, has little direct contact with the work. It assumes that the ordinance is being enforced as it should be. Annually in the process of making and enacting the budget the council may have to give passing attention to the items of license fees received from dance-halls, and to the amounts being spent on dance-hall police. Sometimes, too, the politicians may approach councilmen to get dance-hall operators permits for shady characters, and reformers may come in to request that some licenses be revoked. This is, however, a part of the process of administration which happens to devolve on the council. As far as the legislation itself is concerned, there is little thought of abolishing or changing it. It is not necessary to thresh again the old straw as to the necessity for regulation. Even to save money for the taxpayer it may be unsafe to abolish the regulatory work, since this may bring a sharp rebuke from an aroused public. In the large sense, therefore, neither the council nor the public continues to give very close attention to the problem, although both might be awakened again by some outright scandal in the administration.

Thus the enforcing staff is left with but very little aid even of a moral nature from the city government and the public to face the whole problem of enforcement. The only persons who continue to take a constant and personal interest in the enforcement of this ordinance are the following: (1) The proprietors and managers of dance-halls; (2) the enforcing officers themselves; (3) the politicians who use their influence on behalf of proprietors and managers to obtain licenses for them, and to get their friends and supporters appointed or assigned as inspectors or policemen on this work; (4) the patrons of the dance-halls who would like to see the rules somewhat relaxed; (5) bootleggers; and perhaps (6) some few organizations of citizens interested in social welfare work. All of these groups except the last have definite personal interests at stake, interests of a material nature. Dance-hall managers find it to their interest to be friendly with the officers, and if necessary they use the politicians as go-betweens for this purpose. To them a strict ordinance but poorly enforced is as good as a lax ordinance. Considering the influences brought to bear on them, it is not surprising, either, that an occasional police officer comes to see the point of view of the managers. In any case there is built up around the enforcement of this one ordinance a network of personal relations and interests which may easily result in partial or ineffective enforcement of its terms. Thus the public and the council are cheated of the results which they expected to obtain.

5. In the course of administration or enforcement of the ordinance an arrest is sometimes made. The proprietor illegally permits the sale of liquor on the premises, or an intoxicated man insults a girl patron, or several young rowdies fall to fisticuffs. Then follows that operation in the governmental process which we call *adjudication*. Some local court is called upon to interpret the ordinance, and to apply it to the case in hand. The judges, like the policemen, may never entirely forget about the ordinance. Unlike the police, however, the courts may wait until cases are brought to them, whereas the officers must actively seek out violators of the law. When the court has meted out its sentence of thirty days in the workhouse in the present case, it may turn to other matters until another case is brought in. In the meantime another branch of the administration, the department dealing with penal or correctional affairs, takes the prisoner in hand for the duration of the penalty. We see, therefore, that administration and adjudication run along side by side, year after year, in the unending

work of carrying out the law. They are, in a sense, only two different phases of the process of administration.[3]

The subject of dance-hall regulation was chosen to illustrate the process of municipal government because it is a relatively simple matter and of about average importance. Perhaps the illustration was not of the best since it was a case in which moral forces were supposed to have triumphed to some extent over economic, a thing which does not always happen. Other illustrations which might have been taken are the compulsory pasteurization of milk, municipal ownership of some great public utility, the construction of a bridge or a municipal auditorium, the establishment of a park, the regulation of housing, and the zoning of the city into various districts for residential, manufacturing, business, and other purposes. Whatever matter is chosen by way of illustration, the important thing is to keep in mind that government is a process, not a mere piece of machinery. The process begins with men and women, it is carried on by men and women, and it operates upon the problems of men and women. It is a human process involving human forces and relationships at every point and stage. It is a process which never ends. We can never say, "Now it is finished."

Few statements have been heard more frequently in recent years than the expressions of discouragement with democratic government. It seems at times that not even the weather is more talked about. Radicals, liberals, conservatives, and reactionaries, all seem to agree that government is not all that it should be. Very few men ever stop, however, to examine into the causes of our failures in government and administration. We have all a sense of defeat and frustration without knowing the reasons why. When we analyze government as a process and distinguish its different stages, we are at least able to see more clearly some of the reasons why perfection is not attained. In the first place, public opinion itself is seldom fully informed, wise, clear-cut, and articulate. What we call public opinion is often no more than the selfish wish of a powerful, persistent, ignorant, noisy, and interested minority. In the second stage, when the matter goes into the election, even such public opinion as exists is not often correctly expressed in the result, since every election is full of confusing cross currents, party maneuvers, and the pull of friendships and personalities, and for the added reason that no man or set of men elected to

[3] Upon this point see especially Goodnow, *Politics and Administration*, New York, 1900, where it is shown quite clearly that the adjudication of disputes is only a phase of administration.

office can perfectly reflect the whole of public opinion. Thwarted thus in the elections, public opinion is even more poorly expressed in subsequent legislation. The ardent reformer who has set himself a one hundred per cent ideal of what he wishes to see accomplished, finds that a law or ordinance is passed which expresses only twenty-five per cent of what he wants. It is hard to be satisfied with such small results, and his lamentations reëcho throughout the city. Thereafter comes administration, which is usually somewhat inefficient and unable to accomplish the complete enforcement of the law even as passed, and finally comes adjudication and the punishment of violators of the law, with the numerous delays and technicalities therein involved.

An old adage speaks of many a slip 'twixt the cup and the lip. There is opportunity for many such slips in the process of government. It has all the imperfections of the people themselves, and perhaps a few more for good measure. He would be a bold person who would venture to number and to evaluate all the possible obstacles which beset the person or persons who attempt to get something done by government. A fine head of water entering a watermain can be quickly wasted by numerous small leaks in the pipes along the way. It is even so with the average reform movement which, starting with enthusiasm, high hopes, and ideals, finds its energies, resources, and membership dissipated along the road far short of the accomplishment of its object.

There is also another advantage in visualizing government as a process. It enables us to see what a tremendous advantage powerful and well-organized groups have in politics over the mass of unorganized citizens. Such groups are particularly strong when they have some definite material interest to fight for. They are to be found in the urban party machines, which subsist so largely upon the varied spoils of office, and in the several groups of economic interests mentioned in an earlier chapter.[4] In former days the saloon and brewery interests formed such a group in politics, and other illustrations could be given. These organized interest-groups have resources not available to the unorganized citizens. They have vital interests to uphold and to foster. They have the advantage of daily contact with and of full knowledge of their special problems and desires. They have skilful lawyers and political managers, leaders and advisers who understand something of the art of government. They have control of money,

[4] Chapter VII.

or of votes, or both. They have contact with officials. Even so unholy an interest as organized vice has some of these advantages.

Furthermore, it is not enough for the opposition to win a single political battle against such groups. Driven from one trench, a well-organized interest retires to another, and there renews the battle. If it fails to get public opinion on its side, it may nevertheless win the election; if it loses there it may yet carry the day in the halls of legislation. Where it cannot control the council it can sometimes control the administration, and it may ultimately find protection in the courts. If it is defeated in the city, it may resort to the state legislature. Thus it retires, fighting bitterly and tenaciously as it retreats. How long did not the saloon interests keep control in many cities in olden days! Ultimately this interest had to go because it was condemned by public opinion, yet even now it struggles to return. Who will venture to predict how long it will be before other sinister interests are driven from their seats of power in municipal affairs?

Finally the study of government as a process helps us to understand the machinery or organization of government. It shows us the functions that need to be performed, and in what order they should come. Thus we are able to discuss different forms of government from the point of view of their effectiveness in carrying particular tasks through to a proper completion, and we are also able to test the effectiveness of different forms of departmental organization in the light of their ability to perform their functions. In fact structure of itself has little importance. Only as it is adapted to do certain useful work can the organization as such have any value.

PUBLIC OPINION IN AMERICAN CITIES

No doubt many Americans have experienced a momentary feeling of satisfaction upon reading in Bryce that America is ruled by public opinion.[5] The statement seems to contain a compliment to the average citizen, the man who holds no public office and is not an active party worker, but who is, after all, a part of the entire public which must be responsible for public opinion. Upon consideration of the statement, however, doubts begin to arise. Was the public as a whole responsible for the Tweed ring in New York? Is it responsible for

[5] This idea of the rule of public opinion, first brought out by Bryce in *The American Commonwealth*, 1888, Vol. II, Ch. LXXVIII, was restated by him in *Modern Democracies*, Vol. II, pp. 112, 122. At the latter place he says, "Public opinion is the real ruler of America."

lynching, for the oil scandal, and for other failures of human nature and government? Or, if it is not responsible for these affairs, then why does not its supposedly dominant opinion succeed in preventing them, or at least in preventing their recurrence? After all, what is public opinion? By whom is it created and upon what questions does it operate? What is meant by saying that public opinion "rules" America? These are important questions to which students of psychology and politics have recently turned their attention.[6] Only through careful analysis of the processes by which public opinion is formed and brought into play in cities can we put ourselves in a position to evaluate one of the most important controls in local public affairs.

The process of government begins, in a sense, with the public opinion stage. It is now our duty to analyze this step, although our consideration of it must be brief. We have already used, and we may use again, for purposes of illustration the case of the public arousing itself to regulate dance halls. The whole matter was probably brought home to the local citizenry as the result of a brawl in some dance-hall in which the police had to be called in, some arrests were made, and a reporter got enough news out of the whole affair to make a quarter column in the next day's newspaper. Everyone who reads the item will have a more or less definite reaction to the events reported, but what his reaction will be will depend upon his religious, social, and family background, his business, his education, his age, his interests, and who knows what other factors. A person of puritanical views will remember that he has heard of girls being led astray at these public dances and will be all for immediate action to put an end to the "public disgrace." Another person will be more tolerant towards these "little flings of youth."

The first factor to be reckoned with in considering public opinion is, then, this varied array of preëxisting views, attitudes, prejudices, and interests. To understand these in any city one must set himself to study the people as they are. In our chapter on "The People in Our Cities" we suggest some of the points which need to be looked into,—the racial problem, foreign- and native-born elements, sex, age, economic interests and pursuits, and the virility of neighborhood life. Other factors of great importance are local history and traditions, the character of local leadership, religious groupings and antagonisms, sectional cleavages, the local parties, and the press. There seem to be

[6] See the works of Lowell, Lippmann, Wallas, and others cited in the references at the end of this chapter.

forces at work in each locality which make one city very strict and straight-laced and another more easy-going in the regulation of morals. Economic interests are exceedingly important; a city which depends upon brewing and distilling will be one of the last to vote for the prohibition of the liquor traffic. If the foreign-born element be large, and especially if it come from certain parts of the continent of Europe, the city will almost surely have to compromise on matters affecting social customs.

But it is not only on moral questions that a city's policy and opinion are determined by the character, interests, and traditions of the people. Public educational policy is directly affected by the national origin, the religion, and the resources of the larger groups in the population, and so too is public opinion with reference to health administration, poor relief, public works, the problem of municipal ownership, and almost every other local issue as to which the local populace has the power of choice.

It is upon this human background that reformers must paint their pictures. They have no choice in this, for the background is what it is, and indeed it has something of a will of its own. Few things are tougher and more resistant to change than the existing social structure of a city. Philadelphia and Pittsburgh are to the natives who know them distinctly unlike each other. St. Paul is unlike Minneapolis, and Cleveland is unlike Cincinnati. The local politicians know particularly well the persistent elements in their popular clientele, and the conservatism of the average politician is based upon his judgment that the people in his constituency are not going to change rapidly.

The newspapers. The local media of public opinion necessarily take on something of the air of the city itself. Their success depends in part upon their fitting into the local situation. "First find your public" might well be the motto of many a newspaper, and so in a large sense newspapers do not mold the opinion of the city, except perhaps slowly and by degrees, but must steer themselves by the currents of opinion which they find. A metropolis like New York may support many newspapers of different kinds, because so large a city lacks a certain unity, but smaller places must get along with one or two or three, and these must conform to some extent to the general local situation. A single element in a small city is not enough to support a successful modern newspaper. This is a fact which "labor" and "independent" newspapers have recently had to learn at considerable cost.

For after all is said, a newspaper is a business enterprise, and in an

individualistic society it must first of all look out for its own existence and success. When a newspaper is failing financially there is no public or other fund ready to provide aid for it just because the editors are providing a fine news organ, and are taking a lofty and enlightened attitude on public and moral questions. The main support of the newspaper lies with its advertisers, and its attractiveness to advertisers depends upon the number and the character of its subscribers.

In a word, the character of a newspaper depends to some extent but not entirely upon its readers. For example, if there is only one commercially successful newspaper in a relatively isolated city, the local community has no choice but to read that one. Furthermore a clever business and editorial management may succeed in putting into a paper enough pictures, comic strips, stories, special columns, and other "features" to sell it in spite of much general disgust with its news and editorial policies. How many of us have not met persons, not residents of the largest cities, who buy and read local newspapers with which they are, nevertheless, considerably displeased? And how many times do not the so-called "leading newspapers" fail both as leaders of and as indices to public opinion? The newspaper editor probably knows little more than the average observant citizen about how the electors are going to vote.

The failure of the newspapers to have more influence in local politics (and of course they always have some), is not due to inadequate attention to municipal affairs. It has been the writer's observation that the American city newspaper devotes relatively as much space to the local government and local politics as such affairs deserve. The boiling of the local political teapot gets more space than a revolution in some large foreign country. Month in and month out the mayor's activities receive as much newspaper publicity as do those of the president, and many a city council receives more attention from the local newspapers than does the Congress of the United States. It is not space and words that are lacking, but something more important. That something may be summed up as intelligence and independence of judgment.

It is a rare newspaper which permits its leading political reporter to cover the municipal government. The "cub" reporter without knowledge of the municipal government is all too frequently supposed to be good enough for this assignment. He knows nothing at first of the local official personnel or of their duties, of the party bosses or of the forces which stand behind them. He often writes with the utmost naïveté. If his work proves to be really satisfactory he is likely to be

transferred to what is considered a more important branch of reporting. Furthermore, it is hard at times to avoid the conclusion that he is instructed to look for certain things and to overlook others. At any rate the editor who reads his copy knows the policy of the paper, and when he strikes out some passages of what the reporter has written and rewrites others, the reporter is usually not slow to learn what is desired of him. Thus it happens that the report of a municipal event in one newspaper is sometimes totally different from that in another. The bias of the paper soon becomes evident to all who read. An intelligent and candid presentation of both sides of a question is seldom to be found. If a newspaper supports the "out" party, it may be filled with many little waspish attacks upon the officials in power, which are frequently unfair and usually non-constructive. If it supports and has the support of the party which is in power, it may have much to say editorially about the evils of Tammany government in New York, but there will be no line about the lesser Tammany at home. The local boss will not even be called a boss, for the editor's moral indignation spends itself abroad. There have been and still are some exceptions to these statements. Some newspapers have really been "made" by their frank and fearless stand against machine rule in the city, but the number of newspapers which to-day follow this course is not encouragingly large. We say nothing here of the occasional paper whose silence or support can be purchased.

The local parties. If the newspapers are inadequate to the task of forming and leading public opinion, what of the party organizations? For party workers the political club and the party headquarters serve as centers for many gatherings and discussions. In such places, no doubt, there is much intimate talk about men and policies, but it is very questionable whether public opinion is made there. The party may try to discover public opinion with a view to following it or to directing the public action which should result, but it seldom tries to form the opinion itself. A party wishes to unite the voters under its banners, and any attempt on its part to formulate the issues and to take clear-cut stands upon them would have just the opposite effect. It would divide its supporters and alienate many groups of them. In fact one of the chief failures chargeable to the ordinary American municipal party organizations is their relative failure to evolve programmes of local action and to get the voters interested therein. They generally fail to perform one of the chief functions of party. Reform parties attempt to do this work, but their lives are usually short. Political

workers are interested in patronage and spoils, in getting the offices and in promoting and controlling public works. They take stands upon important issues as a rule only when they are compelled to do so. If some one proposes to change the local laws or charter in such a way as to threaten their sources of income or their political ascendency, they will of course become active in opposition. Over a long period of years, too, they unquestionably have some influence, mainly a conservative one, on public opinion. They help also to develop and to select the leaders who sway the public and who assist it in crystalizing opinion. But who remembers the municipal platform of any local Republican or Democratic party organization? What differences have developed between them in municipal affairs? [7]

Other opinion-forming agencies. Because of the relative failure of the newspapers and the local party organizations to assume a more dependable and positive local leadership, intelligent voters everywhere are finding other means of getting facts and opinion on municipal problems. *Voters leagues* exist in a number of cities for the purpose of gathering and publishing reliable information about the candidates for nomination and election. In Chicago, Cleveland, and other cities, such organizations have been able to wield great power in formulating public opinion as to candidates. *Municipal leagues* under various names are also numerous. It is the aim of such organizations to hold frequent meetings for the free discussion of municipal problems, and to publish little newspapers or bulletins of information. They also have committees to investigate and to report upon local problems, and they sometimes participate in municipal campaigns. It should be observed that they are more interested in measures, while voters leagues are more interested in men. In this respect local leagues of women voters are more like municipal leagues than like voters leagues. Some *city clubs*, *improvement associations*, *taxpayers leagues*, and even various *commercial associations*, perform some of the functions of municipal leagues also. For the union member the *union headquarters* and the local *trades and labor assembly* are important forums for municipal affairs,—and the many neighborhood groups and centers mentioned in an earlier chapter are also influential.[8] In fact it would require many pages to describe the various types of local societies which aid in formulating the local public opinion.

Among the many factors which like the church, the school, and the

[7] As to reform parties, and Socialist and labor parties, see pp. 217–221, below.

[8] Chapter VII.

settlement house, work to build up a sound public opinion, mention must be made of the municipal research movement. In almost every large city to-day there is some bureau or agency organized for the scientific study of local governmental problems with special reference to finance and administration. Since the first of these bureaus was organized in the city of New York about twenty years ago the influence of such agencies has been exerted everywhere to put the discussion of municipal business problems on a firmer factual basis. True it is that some elements in the electorate always feel a partially justifiable distrust of the findings of research bureaus, but on the whole their statements of fact are given a good reception.

But when all has been said that can be said truthfully, it still remains obvious that on many questions a true public opinion must be wholly lacking, and that on many others the opinion must be a vague and uncertain one. Instead of one decisive majority opinion on one side of the question, and an equally clear-cut minority opinion on the other, there are probably in many cases a number of different opinions, each held by a small group. In fact a city is too large a body of people, and its affairs are too multifarious, to make possible an informed public opinion on each issue. It is only upon a few of the salient questions of the day that even a majority of the electors will endeavor to inform themselves. There is little to be gained, however, by criticising voters for their indifference. They show considerable wisdom in refusing to get excited about minor matters where no fundamental principle is involved. Every city government should be so organized, if possible, that only important questions will ever go to the voters, and that when a question is put to them there will be adequate time and means given them to reach a sound conclusion.[9]

MUNICIPAL POLITICS AND THE VOTER

"Politics" in the broad and true sense is the determination of public policies. In this sense it is a process or activity of concern to all men who live under government, and one in which all voters should take a part. The connection between politics and public opinion is wholly obvious, because politics should be a means of creating and educating public opinion, and of putting it into effect. There is room for politics in cities, also, since the local governments have important powers and must decide many questions relative to morals, the pro-

[9] For a discussion of the initiative and referendum from this point of view, see Ch. XI.

motion of health and welfare, the regulation or ownership and operation of public utilities, the promotion of business, the construction and maintenance of public works, city planning, taxation and finance, and methods of government and administration. City government is both politics and business.

Unfortunately the term "politics" has fallen into disrepute in American cities, so much so that a considerable number of citizens refuse to take any part in it. Of these facts we are all aware, but men differ in their explanations of how this situation was brought about. Some seem to hold that at the time of the abolition of property tests for voting and the admission to the electorate of many unpropertied and uneducated people, including even some unnaturalized foreigners, the good and intelligent people in cities were unceremoniously bustled aside by the vicious and illiterate elements who turned the local governments over into the hands of some low fellows who played politics. Others explain that the American people at some time in the past were too busy making private fortunes to give proper attention to the problems of government, and that then, as it were by default, corrupt and vulgar politicians got into the saddle, using the ignorant and purchasable voters as mere mounting platforms, and that it has since been impossible to dislodge them from their places. Clearly these explanations are too simple.

In some interesting lectures on *The Hindrances to Good Citizenship* Bryce laid down the proposition that indolence, private self-interest, and party spirit, are the three most harmful factors determining the political activities of the citizen, the first having the effect of deterring him from performing his duties and the other two having a tendency to pervert his political activities to wrongful ends.[10] Now it was the hope of Bryce and it is the expectation of many others that in time the indifference and indolence of persons not now active in politics will be overcome, and that all enfranchised men and women will intelligently and unselfishly devote themselves to public affairs whenever their services are needed, and that they will at least not neglect their elementary duties as voters. The ideal of the perfect, self-governing democracy, is faced by several hard facts. One is that despite all efforts to arouse them, a great many legally qualified persons will not even vote.[11] A second fact is that there is no case on record,

[10] Bryce, *The Hindrances to Good Citizenship*, New Haven, 1910.

[11] Merriam and Gosnell, *Non-Voting*, Chicago, 1924; and see also an article by A. M. Schlesinger and E. M. Eriksson on "The Vanishing Voter" in *The New Re-*

except perhaps in very small communities, of actual government by all the people. And in the third place, Bryce and other students of politics concur in the observation that most governments the world over are really governments of the few over the many. In America in particular there have been devised many schemes for giving voters a more potent voice in public affairs,—the secret ballot, the direct primary, the initiative, referendum, and recall, for example,—and a great deal of time and money are spent by organizations year in and year out in educating the electorate and in "getting out the vote," but with what result? As yet, certainly, the voters do not participate much more generally than they did before. There is no city of any considerable size in which there can be said to be actual government by all the people. Leaders, bosses, and rings show an ability to "hang on" and to control elections even in states and cities where the instruments of democracy seem to lack nothing. Wealth, too, still shows a persistent power in political affairs. Suppose we added election by lot and frequent rotation in office, would we even then have a guarantee of government by all the people as against the rule of the active, the shrewd, the rich, and the influential?

We are dealing here with a fundamental question. Suppose we made all men and women more interested in government than they now are, should we not still find some more interested than others? Shall we ever have perfect equality of political interest? Will not the franchise-seeker, the job-hunter, and the public contractor, or the seeker of tariff privileges or bounties, always have special reasons for unusual political activity? And suppose we went further and increased the knowledge of all men and women about politics and government, should we not still have some who knew more about it than others? Would there not still be need of leaders and of followers, and would not this need be particularly urgent in large cities, states, and nations? And is it not also true, as far as we can now foresee, that there will always be some who are timid and reserved in public affairs, whereas others have a natural inclination towards the ways of politics and public life?

public, Vol. XL, pp. 162–67 (October 15, 1924). Preliminary reports indicate that despite a tremendous organized effort throughout the country in 1924 to "get out the vote," the total increase in the number of active voters was not large. One estimate is that 52.8 per cent of the qualified voters cast ballots in the 1924 election as against 49.1 per cent in 1920. New York *Times*, Nov. 16, 1924. See also pp. 640–641, below.

In politics as in other branches of life it would seem that leadership is essential and that specialization is inevitable. Some men because of their greater aptitude, interest, knowledge, and ambition, seek, and probably will continue to seek political power rather than professional standing or commercial or industrial success. In every community the politicians, *i. e.*, those who take a keen and active interest in public affairs, are a more or less restricted, specialized, and expert class, who find or hope to find in politics the financial and other rewards which other citizens seek in different pursuits. Let no one mistake this central fact that politics is an art in which only a few become proficient, and that the "average citizen," as we say, is not going to be able to act en masse without the leadership and the organization provided by the politicians.

By no means does this imply that in any city in any generation the existing guild of politicians has a monopoly of political skill, or that they are able to do exactly as they please. New leaders are constantly coming forward, to make politics either their vocation or their avocation, and to threaten the leadership of the old. Neither does it mean that the writer would discourage any attempt to arouse and to educate the voters to greater interest and activity. On the contrary every attempt along these lines is in some degree laudable. Only as the citizens take more intelligent interest in public affairs can the politicians be kept under proper control. The ideal of the all-round citizen is always an excellent one. What we do mean to say is that in the long run and under normal conditions the men who have special aptitude for political work, and who take special interest in it, and give much rather than little time and thought thereto, perform a useful and a desirable function, saving the mass of the people much time and effort, and that these specialists are able to direct the course of government, both city and state, in ways which the citizen scarcely comprehends. There are strings to be pulled, nominations to be made, offices to be filled, contracts to be let, and a host of other things to do which the citizens as a body have not time to attend to and which it would be grossly wasteful of their time and effort to pay attention to. All this routine work of government and politics requires the work and thought of a few or many specialists, and by the skill with which they do it they increase their power of control over all branches of government.

But our discourse has now apparently carried us very far from politics as "the determination of public policies." Here is another point upon which there is much misinformation, particularly among idealistic

people. In the long run the formulation and enactment of policies is an important work of government. It is the grand strategy of politics. But as the routine and the tactics of the day are far more important to the soldier, so is the work of filling offices and looking after political fences and winning elections and attending to the thousand and one other details the most important work of the politician. There is little time left for strategic plans when all the other work has been done, if indeed the political organizer is not by his nature and his commitments prevented to a large extent from taking part in the planning of new policies. So arduous and so technical is the work of the politician in merely keeping his organization intact, and so different are his rewards from those of the true leader or reformer, that we have really developed two different specialized types of politicians for doing what needs to be done. For purposes of convenience merely we shall designate these two types as "spoils politicians" and "reformers."

By a "spoils politician" we mean a man who is active in politics essentially for what he can get out of it. In domestic public affairs he is the exponent of *Realpolitik*, the politics of crass materialism. With him politics is a bread-and-butter business, a regular vocation, and he has no illusions about it. His formula is fairly simple and almost stereotyped. 1. The road to success is political power. 2. Political power depends upon your ability to control votes at election time. 3. You cannot win the personal loyalty of voters by preaching to them or by stirring them up with talk about this and that reform proposal. The voters are, in the mass, conservative. They wish to be let alone. 4. In a pinch votes can be obtained by fraud or purchase, but in the long run voters can best be controlled and made loyal by well-advertised acts of unquestioning charity, by personal solicitude and assistance for them and their families in all the little affairs of life, by appeal to the spirit of gang-loyalty, and by all such other acts as make the voter feel that you are his friend both at court and in daily life. 5. Once you gain political power in these ways, your friendship and influence will in turn be sought by persons of wealth and by higher party leaders, and in addition you will get control over some public jobs and funds which you can use discreetly to reward your friends and followers, and thus further consolidate your position. 6. You need not yourself hold public office to exercise political power and to gain the material rewards thereof, but you must control some offices. If you are in office you had best limit your rewards to your salary and to "honest

graft"; if not in office you will be more free to accept pay for your influence and your "services." [12]

A "reformer" on the other hand is one who is primarily interested in public policies in the large sense. Where the spoils politician is interested mainly in the tactics of politics, in lining up votes, in controlling jobs, and in getting power and financial rewards, the reformer is concerned with grand strategy, or the bringing about of reforms. Politics is generally his avocation rather than his regular vocation. He has less ability as an organizer than has the politician, but whereas the politician is content merely to ascertain and to follow public opinion, the reformer attempts to create and to improve it. He tries to stir the people up and to draw them on to new positions with promises of new and better days. His politics are idealistic and to some extent utopian. In a sense it might be said that the reformer knows or thinks he knows where he wishes to go but has seldom the organization or the machine to carry him to his destination, whereas the spoils politician has an organization or machine with which he can do a great deal of routine political work but he has no special plans for a trip. His machine is more like a stationary engine than an automobile.

No one needs to be told that perfect specimens of these two types of politicians are seldom if ever found. Such outstanding spoilsmen as Boss Tweed and Boss Cox probably would have shown on analysis at least a trace of the reformer. Too many reformers, also, have selfish personal ambitions and very few of them are so innocent as not to see the need of organizing the voters. The definitions which we have given deal only with extreme types. As to the great majority of the men active in American municipal politics we should probably have to say that they all contain more or less of the altruistic, reforming instinct; they are not completely self-seeking. Too many of them, unfortunately, appear to have a primary interest in spoils, and for that reason the term "politician" has fallen to low estate. The ideal combination of traits would be that of the man fully imbued with unselfish reforming zeal, possessed of the social and political wisdom attributed to Aristotle or Solon, and yet endowed with the shrewd ability to influence and to organize the voters which is characteristic of some of our most successful spoilsmen. Men who even approach this ideal are extremely rare.

[12] "Honest graft" is, essentially, what you can earn as a result of holding public office or an "inside" position in the party without actually taking money from the public treasury. See Riordon, *Plunkitt of Tammany Hall*, pp. 3–10. Authorities on ethics would not all agree that such graft is "honest."

In these few pages we have tried, then, to show why it is that the great mass of the voters do not all take the keen interest in public affairs which might seem to be desirable, why it is that they need organization and leadership, and how there have arisen two distinct and to some extent opposed classes of specialists to supply the need, namely, spoils politicians and reformers, of whom the former are more successful at organization and the latter are more interested in leadership. We are aware that these two classes of political specialists are not mutually exclusive, and that they shade imperceptibly into each other. We shall hereafter use simply the term "politician" to designate the great number of men who take active part in the organization of municipal parties, machines, clubs, and so forth, for the primary purpose of winning offices and gaining political power. The term "reformer" we shall reserve for a distinct but smaller class to be discussed in another place.[13]

We do not use the term "politician" in any derogatory sense although it is broad enough to include the cruder spoils politicians. We hold no brief for the municipal corruptionist; he should be scourged from party conferences and from the city hall with lashes. In general, however, it is best to avoid trying to pass moral judgments in the field of politics. Furthermore, it is no more wrong for one man to have political ambitions and to seek political office or power than it is for another man to strive for commercial or industrial or professional success. There is need of able and experienced men in all of these fields, and the only moral differences between men seeking success in different fields of work arise from the motives activating them and the methods used by them. The one moral judgment that we should venture to make is this: that municipal politicians as a class, although not perfect, are a much better and abler body of men than they have generally been credited with being. If a study could be made of the official conduct, the ability, and even the private lives of the thousands upon thousands of men who have served on municipal party committees, and who have in many cases been raised to official positions in the local government, it would probably be found that they ranked well up among their fellow citizens in honesty and ability, and that they far outstripped the majority of the people in their interest in public affairs and in their willingness to do hard work for what they considered to be the public good. Unfortunately there have been corruptionists, and the many must suffer opprobrium for the transgressions of the relatively few.

[13] See pp. 217–219, below, and also Chapter XXIV on "The Programme of Municipal Reform."

THE PARTY, THE MACHINE, AND THE BOSS

The power of the ordinary politician as an individual is usually strictly limited. To a certain extent he may act as a free-lance, depending upon the loyalty of his personal following, but in a large city this is not ordinarily sufficient for his success. In general, therefore, the politicians in cities find it necessary to band themselves together for effective joint action. They also find that it is well, as a rule, to join hands, when they do, under the ægis of the name of some well-known party. If they do this, and become the "organization" of the party locally, they add to their strength the support of those voters who, as a matter of principle, or through habit, prejudice, or ignorance, vote consistently for the candidates of that party, and what is equally important, get some aid from the national party leaders and perhaps some share in the local distribution of state and national spoils.

To a large extent, then, urban political experts or politicians work within and through large aggregations called parties, particularly the Republican and Democratic parties. The party includes nominally all the many thousands of voters who align themselves more or less fully under the party name and leaders. Thus we speak of the Democratic or the Republican party in a city as if it included all those who regularly vote for the Democratic or Republican candidates. A party is sometimes defined, therefore, as a body of voters more or less permanently organized for the furtherance by political action of certain common principles or interests. Such a definition is not misleading, perhaps, if we keep always in mind the fact that the great majority of the party's members, so-called, pay no dues, make no contributions, and have little or no active connection with the organization. Most of the partisans merely vote as advised at election time, and sometimes in spite of all the efforts of the party workers they fail to do even that. They belong to no party clubs, to no committees, to no staff of workers. They are pawns, not players, in the main. It is their loyal willingness to march under the party's banner which makes party victory possible, but it is the inner group of workers and leaders who direct the march and who divide or distribute the spoils of victory.

The inner organization is composed of the politicians, full-time and part-time political workers, whose primary interest is in getting and keeping control of the local government with all its offices and perqui-

sites, and in protecting the material interests of those who work with and contribute to the organization. This central organization is sometimes called the "machine" to distinguish it from the party as a whole, but it is usually the only organized element in the party. The term "machine" also implies commonly that the primary purpose of the organization is to gain the spoils of office, and it even suggests the possibility of the corrupt use of power for the enrichment of the members of the ring. A party headed and controlled by such a machine is, therefore, sometimes called a "spoils party," not because the mass of the party's supporters, or even all of its active workers are interested in obtaining spoils, but because it is well known that the dominant party workers have this interest. It is perhaps not necessary to say that there is nothing necessarily illegal in all this, since many state laws and city charters give the party in power the very widest latitude in the distribution of offices, employments, contracts, and other favors. We say nothing here about the moral phases of the question.

As a contrast to the "spoils party" we have what is sometimes called the "reform party," or the party which is supposed to be less interested in getting the offices than in putting through some important local reform policy. The term "reform party" has lately fallen into disuse, and we have instead such terms as "independent" and "anti-machine" and "good government" party, and others. Ordinarily there is some reason to suspect the appropriateness of these names. The "reform party" is frequently nothing more nor less than the "out" party which desires to get back into office and which uses the language of reform in order to appeal to all disaffected and anti-machine elements in the city. On the other hand, a "spoils party" in the pure state also probably never exists. Every party avows some general principles, or at least some attitudes toward public questions which it holds with a certain consistency. Tammany Hall, for example, throughout its long and not particularly distinguished history, has at times had to about-face on certain questions, yet it has generally stood as essentially a working-class party with conservative working-class principles.[14] The opposition to Tammany, though frequently aided by truly disinterested reformers, has usually been the class of business men with a distinctly different group of principles. In fact,

[14] See the statements of Dr. C. A. Beard on this point in the *National Municipal Review*, Vol. VI, pp. 201–9 (1917). There is interest, also, in a Tammany statement of the organization's aims reprinted in Maxey, *Readings in Municipal Government*, pp. 141–54.

almost everywhere in the North and West the fundamental party cleavage in cities tends to be that between the working classes on the one hand and the more well-to-do classes on the other. This tendency is seldom permitted to work itself out fully, however, for both of the larger parties attempt to appeal to all classes, and make such concessions as they must in order to get the labor vote. The question of whether the majority of the laborers will ally themselves with one party or the other depends in part upon the nationality and traditions of the working class in the particular city. The Irish laborer is generally a Democrat; the German-born worker is more commonly a Republican.

But while the urban politicians must work to some extent under a national party name, the national parties also need the support of the local politicians. Thus there has been brought about this most natural marriage of convenience. The local party machine remains practically independent of national party control for all local purposes, but it also serves as the local organization of the national party, in return for which service it is usually given some state and national patronage in the locality. To the local politicians the local postmastership is a "plum" in no essential respect different from the headship of some important city department. It must not be understood, however, that the bond between the local politicians and the national party runs "until death do them part." On the contrary there have been many temporary estrangements, many acts of faithlessness. For its own existence the local organization needs to control the city and county governments. Self-preservation is a first law among politicians. If the local machine can share also in the distribution of state and national government patronage, well and good, but it is essential not to lose its mainstay. Time and again the national party leaders have found themselves deserted by their local organizations in this and that city. When, for example, the state or national party is putting forward a candidate for high office who is unpopular in the locality, or when the national and state committees have in some way slighted the local leaders and have made them feel that they are not to be considered in matters of patronage, party loyalty is not going to make the local politician over-exert himself in the campaign. In fact a "trade" is not unheard of in which party A in a certain city makes no serious campaign locally against party B's candidates for state or national office, while party B makes none against party A locally. Cases have been known also in which the machine of the local minority party

became a close ally or even a mere tool of the dominant machine on the basis of a proportionate division of the spoils. Shrewd bosses are often adept at "buying off" opposition leaders. The resultant bipartisan machine is especially necessary to the politicians when some new insurgent or genuine reform party springs up in the city. It is the spoils, and not essentially party principles, which draw the politicians together.

As a rule, but not universally, the local party machine has its boss, and common observation tends to support the proposition that the machine in the large city needs a boss far more than does that in a smaller place. When Mr. Charles F. Murphy died in the early summer of 1924, and Tammany Hall thus lost its long-tried and successful boss, the desperate efforts of the organization to find a successor for him presented an almost pathetic spectacle.[15] As in Tammany, so in other organizations of the kind, the boss usually fills no particular official position in the party, and it is even less common for him to hold local office. His is an unofficial and but slightly limited monarchy without any title other than that of boss or leader. He is seldom elected to his place by the members of the organization; as a rule he fights his way to the top and simply comes to be recognized as boss. At times there are rival leaders struggling for the top position.

As it is uncertain whether there will always be a boss in the local party organization, so it is difficult to say precisely what the functions and powers of bosses are. The real constitution of the local party machine is unwritten, the laws of the state make no mention of the party boss, and the bosses themselves do not give out long interviews during their life or prepare their memoirs for publication after death. Even their correspondence seldom finds its way to the printed page. Thus it is that, while the boss may be the real ruler of the city, the citizen could not of his own knowledge testify that the boss has done anything at all or that he has any power. Even local party traditions defining the powers and duties of the boss are probably few and weak and but little known.

From what is generally known of the subject, however, we surmise that the boss's position is that of a connecting link between the party workers, the public officials, and the corporations, organizations, and interests which lend the party their support and which expect favors from it. On the one hand he should know all the party workers of importance, and should know something about all those of less impor-

[15] See the New York *Times* from April 26, 1924, on into the fall of that year.

tance. He must keep at least a mental note of how long they have worked for the organization and how successfully, of what their aptitudes are, of what they would like to have the organization do for them, and so on. When disputes arise over patronage, he must settle them without publicity, and if Leader A is given priority over Leader B in a particular instance, then the latter must be given assurances for the near future. Everything possible must be done to keep the organization working harmoniously without losing the support of any leaders with real personal followings. A smoothly working machine is absolutely essential to the success of a spoils party, and it is a primary function of the boss to keep order in the household. When vacancies occur in the staff of workers the boss must also be ready, if not to appoint, at least to suggest the names of some workers to fill the vacancies. In the private office of the boss must occur many a quiet little conference in which important party arrangements are made.

Besides all the detailed work relative to patronage and party organization matters, there must be many matters touching the conduct of the local government, the passage of ordinances, the letting of contracts, the proposal of bills to be passed by the legislature, and a great many other such matters which are discussed with the boss, or in his office. He is frequently the great coördinator of the municipal business. In many cases, no doubt, his messages are carried to officials and aldermen by lieutenants, for it would not be seemly to have the elected officers discuss the public business openly with the boss or to take orders from him, and in dealings with some officials it might be even better not to let them know that a particular message comes from the boss. Sometimes a man lower down in the organization has more influence with a particular officer than has the boss himself. His own influence must, therefore, often be exercised in devious ways. He has no official power and there is always some public and official suspicion as to his motives.

Then there are the conferences with business men and others who want the city government to pursue a certain line of action. Individuals come who want favors. Others come who wish to ward off some impending action by the local authorities. All seek the influence of the boss, as well as that of lesser local politicians. His function in such cases is partly that of a broker. He brings together, not physically in the same room, for in many cases that would be very undiplomatic, but nevertheless does bring to some sort of agreement, the officials

who have the power to act in the premises, and the groups who want action to take a particular form. Perhaps in the case of the rough and ready boss of an older and cruder type, he demanded pay in cash on the spot for the use of his influence with the council or other officers, and he may even have asked for money with which to bribe them. It is probable that the methods of the boss are now somewhat more refined. When he has lent his influence to some interest or individual, he will at least expect that in the next campaign the persons involved will be ready, directly or indirectly, to contribute to the party war-chest. There is no doubt, either, that some bosses retain for themselves no small share of the moneys which are contributed to the party through them. Furthermore, since they are usually entirely without official position, there is no law to prevent them from accepting money for their "legal" or other services, and the same rule applies to the lesser leaders in the same conditions.[16]

FORMAL PARTY ORGANIZATION IN CITIES[17]

It may be judged from what has been said in the few pages preceding that few things are so adaptable to local circumstances as municipal party machinery. Furthermore, whatever may be the outward form of either the Republican or Democratic party organization in a particular city, the reality is almost always the same,—an implicitly accepted hierarchy from the precinct worker dealing with a few hundred voters, more or less, up through the ward or district leaders to the boss of the entire city. In each area there may also be a committee connected with the real leaders and workers, a precinct committee, a ward committee, and a city or county committee. In the small place the intermediate group of leaders may be of less importance, since the boss can there have direct personal contact with the precinct workers, or it may be that the boss will be little more than chairman of the organization of party workers. There can be more democratic control where the

[16] Some items in the voluminous literature on the machine and the boss are referred to in the references at the end of this chapter. Among the more recent short treatments of the subject are the following: Brooks, *Political Parties and Electoral Problems*, Ch. IX, "Machines and Bosses"; Merriam, *The American Party System*, Ch. VI, "The Boss"; Munro, *Personality in Politics*, Ch. II, "The Boss in Politics"; and Kent, *The Great Game of Politics*, Chs. XIII–XVIII.

[17] More detailed descriptions of urban party organization will be found in Munro, *Municipal Government and Administration*, Vol. I, pp. 300–06; Brooks, *Political Parties and Electoral Problems*, pp. 145–52; and Kent, *The Great Game of Politics*, pp. 1–69, *passim*.

number of voters is small, but in the large city there must be a high degree of centralization of power, taking the form of an oligarchy or a dictatorship.

At the base of the party pyramid is the precinct lieutenant or captain. The precinct is the smallest electoral district, containing usually from 200 to 800 voters. Under the laws the precinct captain may be elected by his fellow partisans, and there may be associated with him a precinct committee, also elected. In some cities the ward, including a number of precincts, is the area in which the party voters elect the committee, and in New York the assembly district is used as the unit area. But whether precinct, ward, or some other area is used, the election of the local committee by the voters of the party gives in all cases the semblance and in some cases a little of the substance of popular control over the party machinery. There are cities, however, in which no election of local party committees is ever held. The impulse comes instead from the central organization and the boss, who select one or more workers for each precinct. These are frequently men who are already on the public pay roll. But whether or not there is popular election of the precinct committee, the character of the committee's membership is likely to be about the same, for the voters too will be induced to choose men who are known as party workers and as members of the organization. There is a good deal of arduous labor for the committee, and even more for the precinct captain,—work which the average partisan is not willing to undertake.

The chief duty of the precinct committee is to keep tab on the voters in the precinct, and to do everything possible to maintain loyalty in the ranks. The end, of course, is to carry the precinct for the party candidates at election time, and to better all previous majorities. Naturally most of the work falls on the precinct lieutenant or captain (these names being interchangeable), who is usually a leading member of the committee. Frequently he is a young man just getting his footing in the game of politics, for the party leaders try to enforce the rule of "Ol' men f'r th' council, young men f'r th' ward."[18] He has the aid of not only his fellow committeemen, but also usually of one or more municipal, state, or even federal employees who are resident in the precinct and who owe their appointments to the party. He can thus count upon the support of a half-dozen people, more or less, at the caucuses or primaries, at the elections, and to some extent throughout the year. With this little nucleus of workers he can frequently

[18] Dunne, Preface to *Mr. Dooley in Peace and in War.*

control the primaries at least. In case of need, particularly at the primaries and during the campaign, he may also be able to use some funds given by the central party committee, and to call upon them for additional assistance. His own work, however, lasts year in and year out, and consists, as we have said before, in ministering to the thousand and one wants of his constituents, probably without ever more than casually mentioning politics.[19]

Standing above the precinct organizations are the ward or district committees, which consist usually of one or more representatives from each precinct who are either elected directly by the partisans or are elected and sent as delegates by the precinct committees. Naturally enough the ward or district committee consists largely of precinct committeemen or lieutenants. Its functions are limited, but it is likely to have the power at least of naming one or more members of the city or county committee. Its leading member is the ward or district leader, and he is usually one of those designated to serve on the central party committee of the city.

The city committee of a party is, then, composed primarily of the ward or district leaders, although there may be other delegates. This body is usually fairly small, having seldom over fifty members, and included within its membership will be the boss. Of course in some states the laws have altered these arrangements to some extent, but no law has been able to take the real power away from the regular precinct, ward, and city politicians, *i. e.*, the men who pay constant attention to the work. The volunteers who rush in at election time do useful work, no doubt, but the regulars everywhere keep control in their own hands.

While the student can easily learn the formal details of party organization in his own city, and can read in books the facts as to the outward organization of parties eleswhere, he should not give too much weight to these matters. Party workers and committeemen have very few powers guaranteed to them by law. Their functions, also, vary from place to place and from time to time. Within the party, however, there is life and action. The strong rise to the top, and the less strong accept their leadership. A committee which appears to consist of thirty may actually be ruled by one or a very few. Rising above the formal party organization appears the oligarchy or the boss.

[19] See a clever description of the work to be done in H. H. Curran, *John Citizen's Job*, pp. 179–217.

THE RATIONS OF THE URBAN POLITICIAN

In his work on *The American Party System* Professor Merriam has given us an excellent statement concerning the spoils system in cities.[20] From his political experience in Chicago and his observations in other places he was able to make up a comprehensive summary of the spoils available at the maximum in a typical city of 100,000 inhabitants. Of course it is not to be supposed that the spoils system is in full and perfect bloom in any American city to-day, but if it were the machine and boss would have control of everything connected with elections, of the local legislative bodies (city council, county commissioners, park and school boards, etc.), of the departments of administration in all units of government within the local area, and of the local courts. If they then exercised their control to the limit, and squeezed every source of revenue until it would yield no more, their power would be of almost indefinable extent. They would control the entire pay roll of the local governments, many state and federal positions, and a great many with corporations and contractors who have received favors from the machine and must pay for them. Through control of the administrative departments (police, fire, health, streets, education, etc.) they would be in a position to give countless little favors to friends, and to put innumerable obstacles and annoyances in the way of those who refuse to support the organization. The council and the various boards could be made to yield whatever privileges, franchises, ordinances or resolutions were desired by the party for the benefit of the favored interests, and the courts could be induced to deal charitably with favored partisans, to turn over to party henchmen the business of defending criminals or of acting as receivers, trustees, and guardians, and to make hard the ways of the opposition. Prosecutions could be pushed or dropped at will. Contracts could be let, purchases of materials or real estate made, public funds deposited, and taxes made light or heavy, all at the behest of the boss and the ring. Indeed the boss might have a fixed scale of charges for every favor within the power of the local government, and these might be made high or low as he saw fit. Such, briefly, are the possible sources of the rations of the American urban politician.

When we look into the actual situations in particular cities, however,

[20] Chs. IV, V, with summary at pp. 160–63. A generation ago in *The American Commonwealth*, Vol. II, Bryce also described the spoils system, as to both its nature and its extent.

we find a great variety of conditions. Everywhere the spoils are much more limited than the boss would like to have them. Rarely if ever does he control all the local authorities. Almost always there are some few officials who have been elected by independent elements or by the opposing party. Many judges are above party entirely. Many prosecuting officers, council members, department heads and others, are not amenable to "influence." By law and charter, too, numerous limits have been put upon the power of patronage. In the filling of many places the merit system must be recognized. Certain contracts may be let only to the lowest bidder. Purchases must in many places be made through a central office in a manner provided by law. Similar restrictions have been established upon the power to grant franchises and to invest or deposit the municipal funds. Even nominations for elective office can no longer be absolutely dictated by the boss. Public opinion and local tradition have also some effect in staying the hand of the spoilsman. What he would like to do may be perfectly within the law, yet he hesitates to act contrary to the moral sense of the community.

Relatively, at least, the politicians have less spoils within their control to-day than they probably had ten or twenty years ago. Because of the rapid growth of cities, however, and the equally rapid expansion of municipal functions, it is open to grave doubt whether the spoils are absolutely less in amount than they used to be. Municipal politicians will tell you that the spoils are comparatively trivial, but a study of actual conditions in any city would probably reveal many city, county, and state jobs, and numerous other perquisites, favors, and means of influence still left to the politician.[21] Certainly the party machines are still fairly flourishing, and we must surmise from this fact that they have the means of sustenance.

The circumstance that there has been some relative decline in the spoils of office, and that the amount of outright corruption is now probably very small, is a matter of quantitative rather than qualitative measurement. It should not blind our eyes to the fact that the spoils are still a main objective of the politicians, and that the result is very detrimental to the local government. Under politician control the public business is conducted on a low plane of morals. Men without marked fitness are appointed to public employments, and their many

[21] It is of course well known that few urban politicians die wealthy, but this is probably due just as much to inability to husband their wealth as to failure to acquire it.

sins of omission and commission are condoned by the machine simply because the sinners are loyal members of the party organization. Party service is put above public service, with much resultant waste and inefficiency. Again, we say that this is not to deny the usefulness of politicians and of parties, but merely to point out that the public pays for what it gets, and that it probably pays more indirectly for politician service than is lost through direct graft.

One unfortunate fact which seems to be connected with the existence of the spoils system is obviously the inability of the "out" party to maintain a vigorous existence. The party in office grows fat by what it feeds upon, while the other, if not actually starved to death, is at least greatly weakened. From this and other causes many cities no longer have a real two-party system, but rather a one-party system with occasional internal divisions.[22] Boston and New York stand out as cities which for many years have been dominated by the local Democratic organizations. In Philadelphia, St. Louis, and Cincinnati, on the other hand, the Republican machines have for years held almost unbroken sway. In the city council of Cincinnati, for example, there has been recently just one Democrat to face the Republican "majority" of thirty-one.[23] Under such conditions "party responsibility" is patently non-existent, or practically so. There is no effective opposition to criticise the government, and the people are left without knowledge of actual conditions. It is questionable whether we should even use the terms "party" and "party system" in such a case, for party implies that the people are somehow divided into rival groups. From this point of view, then, we see once more that a group of politicians organized merely for spoils cannot constitute a true party. As we point out later in this chapter, the spoils system is in some respects the worst enemy of party.

THE POLITICS OF REFORM

There is in American cities another type of politics which the ordinary politician senses and resents, but which he cannot fully comprehend. "Politics," said Mr. Dooley some twenty years ago, "aint bean-bag. 'Tis a man's game; an' women, childher, and pro-

[22] Among the "other causes" of importance we may mention the nationality and the political traditions, habits, and views of the people, and the failure of local Republican and Democratic parties to adopt distinctive municipal platforms.

[23] *The Government of Cincinnati and Hamilton County*, edited by Lent D. Upson, p. 190; *National Municipal Review*, Vol. XIII, pp. 545–50 (1924).

hybitionists 'd do well to keep out iv it." [24] This was and no doubt still is the attitude of many urban politicians, but in spite of them women and prohibitionists refused to stay out of politics, and in spite of them they won their several points, as the 18th and 19th Amendments so fully attest. What have all the politicians contributed in the past quarter of a century equivalent in lasting importance to the enfranchisement of women and the prohibition of the liquor traffic? Or what have they done in cities that is of as much value to the citizens as the movements for the short ballot, for commission and city manager government, for civil service and budget reform, and for the many other local changes and improvements which have come about generally in the face of the vigorous opposition of the politicians? We find again and again in city politics this interesting paradox, that while the reformers seldom win office, and that when they do it is usually for only a short stay in power, they nevertheless succeed in carrying out some striking reforms. The reformer must work to some extent through the politician, and this has the tendency to retard and to change the character of his victory. Nevertheless he does succeed in the long run in accomplishing something of what he sets out to do, while the politician goes along in his treadmill task of barely keeping himself in power and "taking care of the boys." That is why so many politicians, after long lives of arduous labor, die unhonored and unsung, and usually poor.

The reform element is always confronted by a difficult problem in tactics. It is generally in the minority, and it may even be divided. Several roads are open to it. (1) It may organize a separate small party, or several of them, and proceed year after year to put up a slate of candidates for office without hope or expectation of success. This was, to some extent, the policy of the Prohibition party in some places. (2) Instead of remaining independent, a reform party may form a coalition with one of the larger local parties upon the promise of the latter to inaugurate some of the proposed reforms. "Fusion," as this policy is called, has both advantages and disadvantages. Some immediate success may thus be gained, but in the long run it involves many compromises, and it may result in the swallowing up of the reformers by the larger party. (3) A third policy which leaves the reformers much more independence than fusion has had some successes. This is the policy of retaining intact a separate organization, of refusing to deal directly with the other parties as such, and of trying to

[24] Dunne, Preface to *Mr. Dooley in Peace and in War.*

pledge individual candidates for nomination and election to support their particular reform programme. Thus the reform party might in a sense be non-partisan, and its members would both at the primaries and at the general election support a Republican in this district or ward, and a Democrat in that, according to the reform party's determination as to which of the opposing candidates was most satisfactory. This policy is substantially that of the American Federation of Labor in national politics. (4) Another policy is that of maintaining a separate organization, taking no stand as between the parties and none directly to put forward or to recommend or oppose candidates, and endeavoring by education, petitions, and argument to bring the party or parties in power to see the wisdom of adopting the particular reform programme.

Whatever may be their decision upon this question of tactics, however, local reform parties may be distinguished generally by the fact that they put forward definite platforms calling for one or more distinctive reforms, that they seldom have a complete organization with a staff of workers in every precinct (since they usually have but small funds and cannot promise to repay party workers with the spoils of office), and that they are seldom if ever able to claim to be the local Republican or Democratic organization. In a word they are usually small third parties. Hence it is that their appeal must be essentially to the minds and the consciences of their fellow citizens and not to their interests, their pocketbooks, or their personal or party loyalty. Because of these facts they do not generally expect to win control of the municipal government, although in exceptional cases they have even attained temporarily this measure of success. When they do gain power, as we have said, their stay in office is usually short, for they lack too many of the things which make for assured political success. Their reforms grow stale, their purses start lean and usually become leaner, and they have not as a rule the organizing ability or the intimate contacts with voters which make for permanence. In our final chapter we speak briefly of the general programme of municipal reform for some parts of which many local reform organizations, here and there, have stood.

SOCIALIST AND LABOR PARTIES

The failure of the two old parties since the '70s to take up in earnest the problems of the growing class of industrial workers has led to the formation of a series of socialist and labor parties. In the national

field these parties have never been serious contenders for party victory, although they have elected a few Congressmen, but locally they have had a modicum of success.[25] This has been due to the heavy concentration in cities of the very industrial workers to which these parties have made their direct appeal. In the years following 1910 a number of cities, particularly in the middle and far West, saw the rapid rise of the Socialist party. In some cities Socialists were elected to the city council, and a few cities had Socialist mayors. Milwaukee, Minneapolis, Seattle, and Butte among the larger cities are interesting examples.

Many reasons may be found for the success of the Socialist party in urban politics, and among these reasons one not to be overlooked is that the Socialists really have a municipal or urban platform, whereas the Republican and Democratic parties have none.[26] While the two older parties hesitated to favor or to oppose municipal ownership of public utilities, the Socialists came out strongly for it. They urged also the extension of municipal activities in other directions, since they hoped that the cities, in which their appeal would be strong, would prove for them the entering wedge for more extensive Socialistic projects in the state at large. In the cities they would at one and the same time win the support of the workers and demonstrate the feasibility of their proposals. They also favored municipal home rule, and the initiative, referendum, and recall, as means to their more distinctive ends. These definite proposals were not the product of their own deliberations, nor were they all strictly consonant with the national party platforms, but the fact that they had a concrete municipal programme with a strong appeal to workingmen helped them notably in the canvass for votes.

Suffice it to say that in a number of cities the Socialists were temporarily victorious in whole or in part, so much so that one or the other of the old parties became a mere third party for the time being. The Socialists then began to suffer important reverses. Business men, fearing that it would hurt business to have a Socialist administration in the city, flocked into the leading conservative party and spent much money in the campaign against the Socialists. The latter soon found,

[25] See, in addition to Socialist party publications, the *National Municipal Review*, Vol. I, pp. 19–20, 611–19 (1912); Vol. VII, pp. 131–39 (1918).

[26] See an article by Carl D. Thompson on the Socialist position before the war with reference to municipal affairs, in *National Municipal Review*, Vol. II, pp. 416–26 (1913).

too, that under existing charters and laws and financial limitations they were unable to make good on their promises. They failed signally in their attempts to bring about municipal ownership. Their leaders, it proved, were not all of them wise, nor were they entirely unselfish in all instances. Then came the war and with it the split in the Socialist party nationally upon the question of supporting the government in its military operations. There followed the charges of disloyalty against the party's leaders and members, and in some places this had the effect of materially weakening them. In political self-defense many of the members of the orthodox Socialist party left it, while others were read out of the organization. Some former Socialists then began to organize in certain states and cities local labor parties under various names, but with essentially the same platform that they had had before.

In Milwaukee, Minneapolis, St. Paul, and in other cities the movement still goes on for a Socialistic or working-class party divorced from the two old parties. It is likely to be a long time before such a party becomes a leading factor in the more conservative cities of the East and South, but even in those sections the opportunity for such a party is not to be ignored. Whatever one may think of Socialist doctrines, any candid student will recognize the need of having municipal parties that stand for something important in an unambiguous way. If the Socialist party or some other party of similar economic programme could also make itself truly the exponent of honest and efficient administration in cities, the strength of its appeal to independents and reformers as well as to workingmen might well strike terror to the hearts of the old-line politicians. The Socialist party of all parties cannot be a spoils party and succeed. Its whole programme depends upon the constant improvement of the processes of local government.

NON-PARTISANSHIP IN CITIES

The reader will have had little difficulty in gathering from the preceding pages the reasons why reformers have struggled so long and assiduously to break the grip of the party machines in cities. They feel that, as organized, the Republican and Democratic parties stand for nothing of any significance in municipal affairs, that they serve rather as screens for hiding the work of the local spoilsman, and that in addition the voter is constantly misled on municipal issues by appeals to his national party loyalty. The city cannot be truly self-

governing until municipal issues are disentangled from national, and settled separately and without prejudice.

To this general argument Mr. Boies Penrose has added another.[27] A few years before his death he wrote that "One general principle is clearly establishing itself; that municipal government increases in efficiency in the exact ratio in which it is divorced from partisan politics. In this connection I might state that in my judgment party efficiency and capacity for general public service increases in the ratio in which it disentangles itself from municipal politics. For instance, party principles are not even a secondary consideration with the Democratic Tammany machine in New York or the Republican contractors' machine in Philadelphia. Each of them exists solely to promote selfish interests, and each of them is an incubus and a liability to the party with which it is aligned." The second of the two points above made, though not often considered, is really very important. When one sees the reaction of people throughout the country to the mere mention of the name of Tammany Hall, one has the feeling that the Democratic party nationally would gain by divorcing itself completely from all connection with Tammany. The latter may sometimes help the national party to carry New York, but the party probably loses elsewhere more than it gains in that state.

But when the reformers argue against the activity of national parties in municipal affairs, and against spoils organizations in particular, it must not be understood that all of them desire or expect to see the establishment of complete non-partisanship. Many of them fully realize that the great cities at least are too large to do without political leaders and organizations. What they really desire is a clear-cut separation, so that the voter may be able to vote intelligently upon municipal issues as such, free from all confusing connections with national party names and organizations.

In the opinion of the writer a complete abolition of national party activities in local affairs is at present out of the question. In one sense the nation is simply an aggregate of many localities. The national party must have its local branches. These must be kept alive and active year in and year out, and will in the nature of things be manned by political specialists. The party machinery must be kept constantly in working order. The voter must be held in line. If there were no local machines, the national parties would have to create

[27] *Analysis of Philadelphia's New Charter and Reform Laws*, by Boies Penrose, pamphlet, about 1920.

them. On the one hand, very few voters are so constituted, or so interested in municipal politics, as to be willing to make the effort to belong to two separate parties, one national and one local. There is a principle of inertia which keeps the activity of most voters at a minimum. Furthermore, it is difficult for anyone to maintain a number of distinct loyalties to institutions which are substantially the same. On the other hand, the politician who keeps the local unit of the national party in running order is by definition a man much more keenly interested in politics than his fellows, so that it will be nearly impossible for him to keep out of municipal politics as such. In other words, with the same voters and the same leaders interested in both national and local affairs, they are going to find no reason for maintaining two entirely separate organizations, national and municipal. This is all the more true for two other reasons, one that the national party is also the state party locally, and that the state and city governments are closely bound up together; and the other that the divisions among men are tending to become more and more economic, and therefore identical in both the national and the municipal field.

No, what the exponent of non-partisanship in municipal affairs really desires and expects to accomplish is, first, to change the nature of the local party from that of a vendor of spoils to that of a leader of opinion. Most municipal ills come back to the question of spoils. It is the lust for patronage, national, state, and local, which prevents most local party organizations from performing the true functions of a party. And in the second place the reformer desires so to simplify the local government and the task of the voter that the latter will be able to form more independent judgments upon municipal affairs, and not be compelled to rely so largely in the future as in the past upon the dubious advice of the politician. If the grip of the spoilsman upon the local government is relaxed and the power of the intelligent voter is increased, there will be no occasion to abolish local parties.

These two results can be accomplished in part by attacks along different lines. The spoilsman will lose his interest in city government when the amount of spoils is reduced. We realize that this is a thing more easily written than accomplished, but all reforms must come slowly. By the steady extension of the merit principle to new classes of municipal employments, by the better regulation of the letting of contracts and of the purchase of supplies, by the more stringent control of the deposit of the city's current funds and of the investment of its trust and sinking funds, the seeker of spoils and patronage can be

driven back from one defense to another and the time will come when there will be little room left for him in the city government. A great moral revival may be needed before we can expect the full benefits from this course of procedure, but there is much evidence that good results are already being achieved in some cities.

The other line of approach lies in the improvement of the voter's electoral equipment and of his knowledge. Here we mention only four among many items that might be considered, namely, the short ballot, non-partisan nominations and elections, separate municipal elections, and political education. If the ballot is shortened to the point where it becomes feasible for the voter of intelligence to know something about at least one candidate for each office, voters will need less advice from party bosses, and may be inclined to rely less upon what they receive. If nominations and elections are carried out with non-partisan ballots, the party organization will have more difficulty in enforcing party regularity. If municipal elections are held on a different day from that of state and national elections, the voter will be better able to give independent consideration to municipal candidates and issues. Finally the political education of the voter will have the effect of strengthening all the other reforms herein so briefly summarized.

A word needs to be said about another possible effect of the use of ballots without party designations at both primary and general elections. One of the chief criticisms of both of the larger parties to-day is that they really do not stand for distinct principles. Both of them try to appeal to all classes of citizens and to all sections of the country, and they make their platforms accordingly. Instead of taking precise and positive positions upon important issues they contrive somehow to stand in the middle of the road or to write their platforms in language so ambiguous that no sense can be made of them. In municipal affairs, if they take any stands at all, which is unusual, it is particularly noticeable that there is practically no difference between them.

Now, if the primary ballots are printed without party designation and it is provided that the two candidates who receive the largest number of votes for each place shall be the nominees whose names shall appear on the final election ballot, some interesting results may and sometimes do occur. A small minority party, or a hastily organized independent group, putting forward a single candidate for the nomination and giving him united support, often succeeds in nominating him. In other cases both nominees may be affiliated with the majority party. In either of these cases open party support is taboo, and it

might be harmful rather than helpful to the party, since it would be considered by many persons to be contrary to the spirit of the election law. The voters cannot under such conditions be appealed to to vote the straight Republican or Democratic ticket since there is no such thing. As a result the candidates themselves must make the issues and the slogans. By appealing to the voters as "the nominee of the people," or "the workingman's friend," or "the anti-machine candidate," the independent or minority party nominee often succeeds in winning the final election. And it is interesting, too, that in spite of the frequent assertion that only personality will count under a non-partisan election system, there is at times and can always be more stress upon issues and principles than is the case under balloting systems where the party name is printed on the ballot.

Fairly close observation of the operation of the non-partisan municipal primary and election law in the Twin Cities for a number of years has led the writer to the conclusion that it hastened the realignment of voters materially. In most of the wards in these two cities the voters no longer vote municipally as Republicans or Democrats, but as Conservatives or Liberals, the latter being sometimes called Radicals or even Socialists. In Minneapolis, at least, the Democratic party has ceased to have any great influence. The Republican machine has become the head of the conservative forces, the conservative Democrats give considerable support to its candidates, and the Socialist party, Working People's Non-partisan Political League, and other labor groups, with some independent and liberal support, constitute the other party. This redivision of the people into parties might have come about without the non-partisan election system, but it is not likely to have come so quickly and so completely. The Socialist and labor forces began in a small way but they had a fairly united front. They contrived as a rule to put only one candidate in nomination for each office. The other parties, being larger, had less discipline, and they usually contributed several candidates for each place. This division in the ranks of the larger parties gave the smaller parties a chance to win some nominations. There were many cases where the two nominees selected by the voters were not a Democrat and a Republican as of yore, but a Republican and a Socialist, or in a few wards a Democrat and a Socialist. The choice offered to the voter at the final election lay between a Conservative and a Liberal or a Radical and many voters forgot their national party affiliations to the extent of voting on the issue thus presented. A genuine two-party sys-

tem was not long in taking shape, but it was organized upon new lines. The non-partisan system of balloting did not, then, destroy parties, but helped to some extent to bring about a regrouping of the voters. It is probably true, also, that the Liberal-Radical forces in Minneapolis to-day put up a stronger opposition to the Conservatives than the Democrats formerly did to the Republicans.

REFERENCES

The best treatment in brief form of *parties* in American city government is that in Munro, *Municipal Government and Administration*, Vol. I, Chs. XV, XVI. There is an extensive list of books, however, in which the party system is discussed generally with some reference to municipal affairs. We note the following: Bryce, *The American Commonwealth*, Vol. II, especially Chs. LV–LXVIII, LXXXVIII, and LXXXIX; M. Ostrogorski, *Democracy and the Organization of Political Parties*, New York, 1908; Merriam, *The American Party System*, New York, 1922; Brooks, *Political Parties and Electoral Problems*, New York, 1923; Ray, *An Introduction to Political Parties and Practical Politics*, New York, new ed., 1922; Kent, *The Great Game of Politics*, New York, 1924; Munro, *Personality in Politics*, New York, 1924; Orth, *The Boss and the Machine*, New Haven, 1919; and Curran, *John Citizen's Job*, New York, 1924. All of these writers, but especially Bryce, Ostrogorski, and Merriam, put stress upon the spoils system. That phase of the problem is dealt with also in Lincoln Steffens, *The Shame of the Cities*, New York, 1904; Gustavus Myers, *The History of Tammany Hall*, New York, 2d ed., 1917; Riordon, *Plunkitt of Tammany Hall*, New York, 1905; and is to some extent exposed in the reports of and writings about the various graft investigations in New York, San Francisco, and other cities. The place of parties in cities and the problem of non-partisanship are discussed briefly by various persons in the *National Municipal Review*, Vol. VI, pp. 201–37 (1917).

Among the books which deal with *public opinion* and the means by which it is formulated and expressed the following are worthy of note: Wallas, *Human Nature in Politics*, London, 1908, and other writings by the same author; Walter Lippmann, *Public Opinion*, New York, 1922; A. Lawrence Lowell, *Public Opinion and Popular Government*, New York, 1913, and *Public Opinion in War and Peace*, Cambridge, Mass., 1923; A. B. Hall, *Popular Government*, New York, 1921; Mary P. Follett, *The New State*, New York, 1918; and in this connection attention might also be called to the many writings on social organization and social psychology, many of which bear on the problem of public opinion.

The participation of the citizen in government is considered to some extent in all of the works already mentioned. Works like Bryce's *The Hindrances to Good Citizenship*, New Haven, 1909, and Root's, *The Citizen's Part in Government*, New York, 1907, are somewhat extended sermons on what the citizen should do and be. Merriam and Gosnell in their work on *Non-Voting*, Chicago, 1924, make a careful and as far as possible an objective study of the non-participation of some thousands of actual citizens of Chicago.

CHAPTER X

MUNICIPAL NOMINATIONS AND ELECTIONS

The process of popular elections is everywhere fundamentally the same. It consists of only a few essential stages, namely, the determination of what persons are qualified to vote and the registration of their names, the presentation to these voters of candidates for the various offices to be filled, the casting of the votes, the counting thereof, and the official declaration of the results. On the surface of things this all seems very simple, but in actual practice we find many complexities introduced by custom, by law, and by the cunning of man. It is our purpose in this chapter to examine briefly the process as it is carried out in American cities. We are compelled to deal with general principles only, since no one is in a position to say exactly how many cities use each different method of nominating and voting, and with what precise results. The problems of the qualification and the registration of voters have already been discussed.[1]

METHODS OF NOMINATION

In all large American cities elections are conducted to-day with the use of officially printed ballots. Upon these ballots appear usually the names of those candidates only who have succeeded in passing through the preliminary sifting process of a direct primary or a party convention. There are, of course, in most places legal provisions which permit additional names to be written upon the ballot by the voters, and some cities also in which one may get his name on the ballot by petition, but for all practical purposes the person who is not nominated in the usual legal manner and whose name does not appear printed upon the ballot has very little chance of election. Practically speaking, the voter is limited in his final choice to the regular nominees. If one has to go through two doors to enter a building, the first is as important as the second. Hence we hear it said that the primaries are as important as the final election.

To the politician, at least, the control of the nominating process is

[1] See Ch. VIII.

fundamental.[2] He cannot always dictate the result of the final election, but he can wield great power in the making of nominations. Furthermore his whole standing as a leader in his party and his ability to influence the government subsequently elected depend upon his success in the primaries. It has been difficult to arouse the voters to full realization of this fact, but political experts have always been aware of it. Consequently the history of nominating methods in the United States is the history of a continuous struggle between political inner rings which have tried to keep the power of nomination in their own hands, and those more on the outside who have endeavored to devise and to enforce methods of nomination by which the rank and file of the party would be given more power of decision.

Personal declaration and filing. The first and simplest method of nominating for public office is that of personal declaration, which in its legalized form is called filing. When offices are unpaid and unattractive, and when men of little education or ability are either excluded from election or are so modest and unambitious that they will not push themselves forward, nothing more is needed than a simple declaration system. In practice it would be difficult under such conditions to get any one to file for office, and it might become necessary for leading citizens to bring group pressure to bear on individuals to induce them to come out. At the worst there would not be a multiplicity of candidates, desirable and undesirable, and no preliminary process of elimination would be required. In such circumstances it is no doubt proper to speak, as the English do, of a man's "standing" for office. To this day, despite the rise of the Labor Party, many candidates for city councils in England find themselves unopposed for election.

In the United States, however, "running" for office is a more truly expressive term. While there are many cases of minor offices in small towns and rural districts where the office must seek the man, in large cities it is more common to find a number of candidates for each place. This situation is one of long standing, and is traceable to a number of different ideas and causes. On the one hand public offices usually carry some salary or give the incumbent an opportunity to advertise his business or to make something for himself in other ways. Furthermore, many young business and professional men, especially lawyers, who do not actually expect to be elected, find that they can enlarge

[2] This point is stressed by F. R. Kent in his work, *The Great Game of Politics*, New York, 1924, Ch. II.

their acquaintanceship profitably and get some publicity inexpensively by filing for nomination and making something of a canvass. This is not a high and dignified attitude to take toward public office, but it is a common one. It goes back to the ideas of the Jacksonian democracy. It is an outgrowth of the idea that any man is good enough for public office, that frequent rotation in office is a desirable thing, and that elections and offices may be used by the individual as a means of personal advancement. But even if these explanations do not suffice, there is little doubt about the central fact that we usually have in large cities a number of candidates for each office. It is reported, to take one instance, that in the 1922 state primaries each Republican voter of the city of Cleveland had to help nominate 43 candidates from among 175 aspirants for nomination.[3] This gave an average of more than four persons seeking each nomination. Other parties had, of course, additional candidates for party favor. The number of candidates in this case was probably high, and yet the occurrence is rather normal.[4] So it is that with many places to be filled by election, and a number of candidates for each place, American voters need either some system of expressing a series of choices, or else some method of preliminary elimination of the weaker candidates. Otherwise under our ordinary system of balloting, men are going to be elected to office by small and unrepresentative pluralities.

The caucus. When public offices come to be sought after keenly by different groups and individuals, the unofficial caucus is a natural and early development. Voters who wish to work in unison and to exercise a real influence in the selection of public officials naturally come together in a meeting place, have preliminary discussions, and agree upon giving united support to a candidate of their own class, group, or persuasion selected by them. Under the ordinary constitutional right of free assemblage it is perfectly legitimate for any one to call a caucus, for a caucus may be nothing more or less than a gathering of citizens to discuss men and measures. Such gatherings were once commonly held in saloons, but to-day they are held in party headquarters, clubs, offices, halls, stores, and homes, in fact at any place that is convenient.

[3] *The Annals* of the American Academy of Political and Social Science, Vol. CVI, p. 32 (1923).

[4] There has not been any exhaustive compilation of statistics upon this point, and one must speak from observation only. While there seems to be general agreement that we generally have enough or more than enough candidates, disconcerting evidence can be found. See *The Annals*, etc., Vol. CVI, pp. 137, 138.

The regularized party caucus is, of course, always the most effective. By this is meant a meeting of partisans held at the call of the party leaders and conducted according to party rules. Frequently such a caucus amounts to nothing more than the ratification of the "slate" or list of candidates made up in advance by the party boss or ring. Herein lies the real objection of many voters to the whole system. It yields too easily to boss control. Let us assume that the electors in a small city are divided into two parties. When a party caucus is called the party adherents naturally wish to have some voice in its deliberations. They attend the meeting only to find that the chairman has already been selected by the leaders, that the programme of business has been all made up, and that they are not given an opportunity to discuss policies or to debate the merits of different candidates but must instead hurry through the whole business of approving a list of candidates previously prepared. Now the boss or ring has undoubtedly made up the list with a view to satisfying all elements in the party and to make a winning ticket of candidates who will not be too independent of machine control. In many cases also the bosses are doubtless wiser than the insurgent members of the party who think less of party victory than of principles, the character of candidates, or their own personal grievances. Nevertheless boss methods always have the effect of alienating many voters from the party, and of creating opposition to the caucus system.

When cities grow beyond a few thousand population the city-wide caucus becomes impossible. The caucus is, in theory, primary and deliberative. It is "primary" because it includes the voters themselves, and not mere delegates or representatives chosen by them, and because it is the first step in the electoral process. It is "deliberative" in theory because the voters are presumed to get together to discuss measures and candidates. In the nature of things such gatherings must be small. You cannot get thousands or even many hundreds of voters together in a hall and in a few hours time give them all an opportunity to be heard. The genuine caucus then disappears, and the work of selecting candidates for office falls to the party bosses, or the party factions in the council. In the state and national fields the legislative caucus and the Congressional caucus had their rise. This unauthorized exercise of power by persons not selected by the voters for that purpose aroused strong opposition among the voters. They demanded that they be given once more a greater voice in the selections. At this stage the institution known as the party nominating conven-

tion came into existence. It was supposed to be more democratic than the caucus of self-selected leaders.[5]

The party nominating convention. As distinguished from the original caucus, the party nominating convention is a secondary or representative body. Like the caucus it is also, in theory, deliberative. It is the assemblage not of all the party voters in the city or other area, but of a group of representative delegates chosen by the partisans in their several precincts or wards to attend the central meeting. Clearly the establishment of a convention system does not eliminate, but rather builds upon and complements the caucus system. A little primary gathering of the partisans in each ward or precinct is still needed to select the convention delegates. These primary meetings are still called caucuses, but instead of actually selecting the candidates for office they merely select the convention delegates who are to do the nominating. Thus the caucuses, which in their simplest form are direct primaries, though unofficial, become indirect primaries. At this point, then, the caucus, by reason of the reduction of its functions, becomes far less interesting to the voter. He begins to exhibit a strong reluctance to attend. On the other hand, the party bosses consider the caucuses now, if possible, more than ever important. If they can but control the caucuses, the convention will practically take care of itself. The abstention of many voters from the caucuses is, therefore, entirely to their liking, since it leaves the selection of convention delegates to the party workers, who know what to do. Furthermore, even if the voters do attend in fairly large numbers, the bosses can to some extent still dominate the caucuses and can also keep hidden from the voters the true aim and purpose of their plans.

When this point is reached, caucuses have lost their original character. To a large extent they cease to be deliberative, even. In fact, many caucuses are run as are ordinary elections. Printed ballots are thrust into the hands of the voters who attend, on which are given the names of just enough persons to make up the list of delegates from the precinct. This is obviously the "machine ticket." In case there is a local contest, there may be a rival list of delegate-candidates as well, but usually there is not even this much choice for the voter. If insurgency is really rampant, and if too many voters not strictly bound to the party wheel come to the caucuses, the local leaders find ways of

[5] It was not the primary caucus but the legislative and the congressional caucuses which aroused so much popular opposition in the days of Andrew Jackson. See Dallinger, *Nominations to Elective Office in the United States*, Chap. I.

giving misleading information as to the time and place of meeting, or they challenge the regularity of some voters who appear, or they call the meeting in a hall which is too small to accommodate everyone, in the meantime advising their own supporters to be there early and to fill the room, or in extreme cases they may even resort to violence to control the caucuses. These and other tricks known to the political trade have the effect of bringing still lower the interest of the thinking voter, with the result that the caucuses are left almost wholly in the hands of the organization workers. It was uncommon in many places to have more than five per cent of the electors participate in the caucuses. The writer is aware, of course, of the fact that in some places caucuses are tolerably well conducted, but the tendency everywhere was and is to have them fall into the hands of the machine.

The delegates thus chosen at the caucuses proceed in due time to attend the city or county convention for the purpose of nominating candidates for local office. They may also select delegates for attendance on state and national conventions, but that is something outside of our picture. If the machine has controlled the caucuses, the convention usually gives it no trouble. At best it is usually too large a body for effective deliberation. The organization generally controls the appointment of officers and the selection of committees, by whom much of the work of the convention is done and sometimes behind closed doors. The opposition elements present in the convention find it very difficult to make any headway. At times it is possible for the anti-machine group to win out, or at least to split the convention, but such successes are not the rule.

Direct primaries. It is not surprising that the caucus-convention system of nominating candidates for local office gave rise at an early date to much popular opposition. Popular leaders were quick to see the power which it gave to the machine with its workers and henchmen in every precinct. More slowly the people themselves were aroused to demand a change. At first it was thought that the system would be improved if it were regulated by law in such a way as to give all members of a party a fair chance in the caucuses. This proved to be insufficient, however, and hope of reform came finally to be placed upon the direct primary system under public and not party control.

The direct primary may be defined as an official preliminary election conducted not for the purpose of electing men to office, but in order to select the few leading candidates who shall have their names printed on the final election ballot. Such a system is "direct" and

"primary" because the voters themselves make the nominations without the intermediation of delegates or representatives acting in nominating conventions. The direct primary is, of course, an election and not a meeting, and hence it lacks the possible deliberative element of the caucus or convention.

The system thus briefly described has become the prevailing system of nominating candidates for municipal office in the United States. Connecticut, Rhode Island, and New Mexico are reported to be "the only states which nominate candidates exclusively by other methods." [6] There are, of course, very marked variations among the state direct primary laws, and no one is yet in position to say just what have been the results from the several systems. We have already enough information, however, to come to some tentative conclusions.

In a general way, municipal direct primary systems may be classified as follows:

I. Partisan direct primaries
   A. Open
   B. Closed
II. Non-partisan direct primaries.

Naturally a partisan primary would be followed by a partisan election. a non-partisan primary by a non-partisan election. The systems are, therefore, distinct in both stages of the election.

A *partisan* direct primary is a preliminary election provided for by state law, in which each party is permitted to have its candidates for office nominated by the voters of the party at a regular, official preliminary election conducted by public authorities at public expense just like any other election. Ordinarily, to save expense, the several party primaries are held on the same day and at the same polling places. Hence we sometimes hear the term "joint primary" although "separate primaries" now seem to be rare. The primary ballots, printed at public expense, bear the names in separate columns and under appropriate office titles of the members of each party who have put themselves forward for party nomination for office. In other words, there must have been a preliminary filing of candidates. Thus if White, Gray, and Black have filed for the Republican nomination for

[6] *The Annals*, etc., Vol. CVI, p. 11. As a rule the general primary and election laws of the state apply also to municipal elections, but there are cases where the state has imposed upon one or more cities a distinctive method of nomination and even of election of officers, and there are other cases where home rule cities have adopted their own regulations.

the mayoralty, their names will be printed in the Republican column or on the separate Republican ballot under the office title "Mayor." The same would be done in the Democratic column or on the separate Democratic ballot for Smith and Jones, who have filed for the Democratic nomination for that office, and so on for each party.

If the primary is of the "open" type, one single large ballot will ordinarily be handed to each qualified voter. On it will appear in separate columns the different party lists, Democratic, Republican, Socialist, Independent, and so on. The elector will then retire to the secrecy of the voting booth and there proceed to mark crosses *in a single party's column* after the names of those candidates, to a number not exceeding the number of places to be filled, whom he would like to see nominated as candidates of that party. It is a party primary, and a voter cannot well belong to more than one party since parties are presumed to be rivals. Hence in this system he may not legally vote to nominate a Democrat for mayor, a Socialist for city treasurer, and a Republican for alderman, but he may help to nominate a whole list of officers in any one of the party columns. Since voters, though instructed to the contrary, will sometimes by mistake vote in more than one column, various devices have been tried to prevent his spoiling his vote in this way. By one system the different party lists were printed on separate slips of paper and he was permitted to choose any of them for his vote. A more secret method was that of having all the party lists on one sheet with perforations between, so that the voter could tear out the particular list he desired to vote. Of course, in the latter case he would be permitted to drop only one ballot in the box.

In law and in theory, a "closed" partisan primary is one which is definitely restricted to members of the party. This result is usually accomplished, so far as it is accomplished, by printing separate primary ballots for each party, and by requiring each voter to declare his party affiliation as he steps up to the election judges to obtain his ballot. In case a voter's declaration of allegiance is challenged he may in some states be required to swear or affirm that he voted for the candidates of this party at the last election and that he intends to do so at the next. In some places the voter must state his party affiliation at the time of registering; he is then entered as a member of that party, and he cannot claim to vote any primary ballot other than that of his party. Of course, the laws differ very much from one state to another.

In practice many a so-called "closed" party primary is to some ex-

tent actually "open." A strict law rigidly enforced might succeed in preventing the infiltration of outsiders into the primary of a particular party, but the cases in which this is fully accomplished are probably rare. In the first place the oath or declaration required in many places relates to matters of which only the voter himself has any knowledge. If A swears that he voted for Republican candidates in the last election, who but the powers above could possibly prove the contrary? The laws of all the states require secret voting. In the second place, the oath is in some places a flexible one. The elector must swear that he voted for a majority of the candidates of the party, or some such formula. He may have voted against the most important party candidates and still be able to qualify as a partisan without straining his conscience. Then, too, the judges of election may be careless in their enforcement of the law, and unless the parties are exceedingly well provided with challengers they will in such a case be unable to prevent "cross voting." In Minnesota, for example, where a legally closed party primary law exists for the leading state offices, many judges of elections never ask the voter at the primary "What party do you belong to?" but simply ask, "What ballot do you want?" As we shall see, these two questions are frequently entirely different.

As the closed party primary is designed to promote party regularity and a strict control by each party over its own nominations, the open party primary is founded upon the theory that a voter should not be required to disclose his party affiliations, and should be permitted to cast a ballot in the primaries where it will do the most good. The open primary encourages independent voting, and sometimes does even more than that. While each voter must restrict himself to one party's ballot, he may in secret make his own choice of party, and he may change his party allegiance between one election and another. Under the open system, therefore, more than under the closed, the voter must consider how he can make his primary vote most effective. If he is a Democratic voter living in a city or state which is predominantly Republican, he might reason as follows: "In national politics I am a Democrat. However, state and local affairs have little or nothing to do with my views on tariffs, trusts, and foreign policy. Furthermore a Democrat has very little chance of election to state or local office in this community. Hence my local primary vote will be most effective if I cast if for the best qualified candidates of the party which is likely to win the final election. In this way, too, I may help to defeat the local Republican machine." It is perfectly clear to observers

in Wisconsin, Minnesota, and other states where primaries are practically open that many voters of the minority party do actually vote in the primaries of the dominant party. This is called "cross voting," by which is presumably meant that the voter crosses party lines in the primaries. It seldom has the effect of inducing majority party voters to enter the minority party primary, for there is nothing for them to gain in that way. In fact there is frequently no contest for the nomination of a minority party, whereas the majority party usually has a number of contests. It is, therefore, the majority party which suffers infiltration, and the majority party machine which most strenuously opposes an open primary system.

There may be other motives for cross voting where the two leading parties are well organized and about evenly balanced in strength. "Divide and conquer" is the motto of many an urban political leader. If there is a vigorous contest for a nomination in party A between machine and anti-machine candidates, while party B is harmonious and has no important contests at the primary, the leaders of the latter may suggest to their followers that they enter the other party's primary to help nominate that candidate whose chances of ultimate election are relatively the smaller. If the weaker candidate of party A gets his party's nomination, enough of his partisans may desert him at the election to give the victory to the candidate of party B. While cases of this sort undoubtedly occur at times, the great majority of American urban voters probably would refuse to be participants in cross voting of this kind.[7]

At the end of the day's balloting at a partisan primary, whether it be of the open or the closed type, the votes are counted by party lists, and there is usually great disparity of numbers as between the party lists. Because of the greater amount of cross voting, the difference is likely to be larger in the case of the open primary. Thus, in a predominantly Republican city there might be 30,000 Republican ballots marked, 10,000 Democratic ballots, 3,000 Socialist ballots, and so on. These differences in total party votes mean nothing to the judges and clerks of election, however, except more or less work in counting. The only question for them to determine at a partisan primary is, which candidate of each party for nomination to each office, leads all contenders in that party for the same nomination? For example, the balloting for mayoralty candidates might run as follows:

[7] Professor A. B. Hall gives some interesting figures showing Wisconsin's experience with cross voting in *The Annals*, etc., Vol. CVI, p. 51.

Republican	*Democratic*	*Socialist*	*Independent*
White, 14,000	Smith, 6,500	Brown, 1,800	Johnson, 3,200
Gray, 12,000	Jones, 3,500	Green, 1,200	Field, 2,000
Black, 4,000			

The party nominees are those whose names are underlined, *i. e.*, those who received the highest number of votes within their own parties. The 12,000 votes cast for Gray make him stand second in the entire poll, and exceed the combined votes of the nominees of the Democratic, Socialist, and Independent parties, but he wins no nomination thereby. His own party needs but one nominee, and that one is White. At the final election, then, only the names of White, Smith, Brown, and Johnson will appear upon the ballot. In other words there will ordinarily be as many candidates nominated for each important office as there are parties. There is no assurance, therefore, of a true majority election, since there may be three or more parties. This is a possible defect which the non-partisan primary system is supposed to overcome.

The *non-partisan* direct primary system of making nominations for public offices is to be found in a large number of cities having the commission and city manager plans of government, and also by general state law in the cities of Minnesota and California. In fact it has become a very common method of nominating candidates for local office despite the vigorous opposition of party leaders. The procedure is very simple. Any person who wishes to run for an elective municipal office files his declaration of intention and deposits a small fee with the appropriate municipal official. A small petition may be required in addition, to be signed by 25 or 50 local voters. All candidates thus filing have their names printed on the primary ballot in alphabetical order or in rotation under the appropriate office title and without party designation. Every voter at such primary is then given the same ballot, and he does not need to state his party affiliation. He simply puts a cross (X) after the name of his personal choice for each office. He may or may not know the party affiliation of the different candidates. Knowingly or unknowingly, he may help to nominate a Republican for mayor, a Socialist for alderman, and a Democrat for municipal judge. The election officials merely count the ballots as they find them, and certify the names of the nominees. Usually the two candidates having the highest number of votes for each office are declared by law to be nominated, but in some places the three highest are taken. The nominees in either case may be all of one national party,

or they may be of different parties. The law simply ignores the facts as to the party affiliation of either voters or candidates.

The outstanding argument for the non-partisan primary system is that it is one means by which the grip of the national party organizations upon the local government may be weakened. Merely to print ballots without party designation will not, of course, accomplish this result, but at least the party cannot urge voters to vote the straight party ticket when there is no such thing. Parties still function in the background, and there is little reason to doubt that the candidates who have machine support usually win the nominations, but the law at least looks askance at too-open party activity. If the law provides also that only the two highest candidates shall have their names printed upon the final election ballot, there is a tendency to promote true majority elections. Unless the two candidates be tied, one must receive absolutely more votes than the other, giving him not a mere plurality but a genuine majority, which is more than half of the votes cast. We must bear in mind one qualification, however. If the nominees for mayor under this system happen to be Black and Dark Gray, many voters who would prefer Light Gray or White may abstain from voting at the final election. The majority of the votes cast, in other words, does not tell us how many votes were cast out of the total number of possible votes in case there had been a wider choice.[8]

Nomination by petition. In a few cities municipal primaries have been abolished in favor of a petition system of making nominations. A candidate for the mayoralty or for an aldermanic position simply presents to the proper authorities a nominating petition bearing some hundreds or thousands of signatures and addresses of legal voters, the required number being specified in the charter, and thereby gains the right to have his name appear upon the final election ballot. The election is thus reduced to a single stage, although of course the candidates have to spend a considerable amount of time in having their petitions circulated. In this as in other cases the party with its many workers, or any other organized group, has an advantage over all unorganized citizens in getting its favorites placed in nomination. It is difficult to prescribe just the right number of signers to be required for petitions in order to give the independents some chance to enter their leaders in the race and at the same time to avoid a multiplicity of candidates. Under this method of nomination the subsequent elec-

[8] This discussion of non-partisan nominations is closely related to that of non-partisanship in general at the end of Chapter IX, above.

tion may be conducted with or without the designation on the ballots of the party names. Boston and Cleveland are the leading cities which use this system of nomination at the present time, and it appears to have given satisfaction to both the bosses and the electors.[9]

Supplementary election system. A small number of other cities have accomplished in part the reduction of the election to a single stage by a resort to the continental European system of having a first, and, if need be, a supplementary election. The first election, whether called a primary or not, is a regular election. Candidates file in the usual manner, paying their filing fees and perhaps presenting also a small petition of electors who sponsor them. Any party organization or other group thus finds it easy to put forward candidates. If any candidate for any office receives a true majority of all the votes cast for that office at the first election, he is declared elected and no further balloting as to that office is required. Where no one receives a majority at the initial election, however, the two or three highest candidates are declared to be the nominees, and a supplementary election is held at a later date to decide as between them. The nominating process is here exceedingly simple, and there can be no objection on this score from either bosses or independents. Besides being used in some smaller places, this system is now in force for the election by wards of the fifty aldermen of the city of Chicago. It is reported that in 1923 the first election was successful in thirty of the fifty wards; in the other twenty there had to be supplementary elections.[10]

It is undoubtedly desirable from almost every point of view to reduce elections to a single stage if possible. We may ask why it should be necessary for the voters to go twice to the polls to elect one set of men for one set of offices? The reason usually given for having some preliminary elimination contest is that there are usually more than two candidates for each important office, and that it is desirable to reduce this number first in order to bring about a true majority choice at the final election. As we have seen, however, party primary and convention systems do not ensure this result, and it is somewhat doubtful whether it is perfectly accomplished by non-partisan primaries even where all the candidates are eliminated but two for each office. The

[9] Munro, *Municipal Government and Administration*, Vol. I, pp. 268–69. The system of nomination by petition was proposed in the 1900 Program of the National Municipal League. *A Municipal Program*, 1900, p. 176, constitutional amendments, sec. 3.

[10] Merriam and Gosnell, *Non-Voting*, p. viii.

defect lies largely in the ordinary method of single-choice voting. Where there are five candidates and each voter has but one choice, A may receive 30 per cent of the votes cast; B, 25 per cent; C, 20 per cent; D, 15 per cent; and E, 10 per cent. In such a case either A would be elected by a plurality representing less than one-third of the active voters, or else a second election would have to be held and the same voters would have to go back to the same polls to express a second choice as between practically the same candidates. Why could not a system of voting be devised which would permit a voter to express all his choices at one election under rules which would so guide the counting of the votes as to establish majority rule? The solution of the problem if there is any would seem to lie in the use of some system of preferential voting.[11]

THE DEBATE CONCERNING DIRECT PRIMARIES

For many years the American people have discussed the relative merits of various nominating methods, but agreement is still far off. As in the case of the tariff there seem to be conflicting interests, seeking different ends, and hence unable to see the problem with a single eye. Political party leaders generally desire to see the nominations left in their own hands. They speak much of the necessity of parties and of the desirability of party unity and responsibility. Those who desire to see a more general popular control over public officials, however, insist that control by the party leaders means the flouting of the will of the voters, the selection of unrepresentative candidates, and the undue subservience of the candidates to the bosses. Each party to the debate supports its views by additional arguments, some of which we will need to consider.

A caution needs first of all to be uttered. We are studying in this volume the problem not of state and national but of city government. The problems of the smaller area are distinct from those of the larger and in some respects are different. Most of those who argue against the direct primary have foremost in mind the state government and either exclude the city problem altogether or make no special reference to it. At the same time many politicians wish to see the direct primary wholly abolished in all fields. Their arguments against the different forms of the direct primary vary to some extent, but at heart they are much the same.

[11] See below, p. 247–250.

1. The main issue lies between the direct primary in some one of its forms and the older caucus-convention system of making nominations. Those who oppose the direct primary aver that it makes party responsibility impossible. The theory runs as follows: Democratic government without parties is inconceivable. Parties are essential because they crystallize public opinion, provide political education and leadership to the voters, furnish a stabilizing and continuing element in public life far more valuable than an easily broken series of popular leaders, and can be held responsible by the voters for their acts. But parties need conferences and conventions with opportunities for deliberation and compromise in order to maintain harmony and to carry on the traditional policies of the organization. The direct primary prevents party conference and compromise, and permits irresponsible elements in the party to put forward and at times to nominate as candidates of the party men who are not regular in their party affiliations and who will not follow party leadership.

In the view of the writer these considerations have little or no relevancy to the conditions actually existing in American cities. Despite its large population a city is a small and compact area in which it is relatively easy to organize parties when needed to settle important local issues. Unfortunately, however, in most cities parties of a peculiar type have sprung up and perdured, which have no real interest in policies but are mainly concerned with spoils, patronage, and privileges. They do little to educate the voters or to crystallize public opinion. Whatever stability and continuity they have furnished have resulted from their ability to continue to control patronage and to fight off the merit system, centralized purchasing, and every other reform designed to improve the local government. The real leaders in American cities have been in the main anti-organization men like Tom Johnson, "Golden Rule" Jones, Brand Whitlock, and Seth Low. True, these men also needed organizations and had them to a certain extent, but they did not require to have behind them permanent spoils machines which were greater than they. Their organizations needed to hold conferences, too, from time to time, as all true parties do, but there is nothing in any direct primary law which abolishes the right of freedom of assemblage or which prevents any party from holding any number of conferences. The reasons why such conferences are not more frequently held by urban parties are patent to any observer. The party leaders fear such conferences, first because they think they will be construed by independent voters as an attack upon the primary

law (The wicked flee when no man pursueth!) and second because a large conference truly representative of the entire local party called to discuss party policies would be the most disruptive thing possible for any local spoils party, and would be most dangerous to existing leadership. The machine does not welcome statesmen and tries to avoid issues.[12]

It is of interest to note that very few opponents of direct primaries go so far as to assert that the primary system has destroyed party organization. Some of the early friends of the direct primary system seem to have hoped that this might occur, and were keenly disappointed when it did not. It is fairly clear that the direct primary of itself cannot destroy parties for the simple reason that organization is still needed. Generally speaking it is the organized group which succeeds in making the nominations whether under the partisan or the non-partisan direct primary, but of course the machine's chances of success are somewhat less under the direct primary than under the caucus-convention system. Moreover before the primaries it must work for its slate to some extent *sub rosa* lest it anger other candidates for the party nomination and lose the support of them and their friends in the election. This has led to the assertion, frequently heard, that the party machine keeps its power but ceases to be responsible for its acts. This statement must also be taken with a grain of the salt of reality. Under no system of nominations has the machine ever been fully responsible to the voters. The power left to the voters who are disappointed in the nominations is in all cases merely that of voting for the rival ticket in the final election. The direct primary system does not take away this recourse, and the convention system offers nothing more. It is true, however, that the candidate nominated at a direct primary feels ordinarily more responsibility to the voters and less to the machine, relatively, than he does under the convention system.

2. Another group of anti-direct-primary arguments centers around the interest, knowledge, and activity of the voters. It is said that the direct primary system encourages an increase in the number of smooth-speaking, unstable, inexperienced candidates who hope to ingratiate

[12] The smooth running and uninteresting course of the Republican national convention of 1924 should be contrasted with the violent and disruptive debates of the Democratic convention in the same year. The Democrats did just what shrewd political bosses do not want a party to do, and the result in the subsequent election proved the wisdom of the bosses.

themselves with the voters sufficiently to be nominated. As to these men the voters can have little or no knowledge. There can be no real public opinion as to the candidates. The voter's burden of work is increased. He must choose someone, since there is no one else to do the nominating, but he cannot have party guidance in making his choice. Hence the vote is very much split up and the nominee selected is frequently the choice of only a small percentage of the voters. In consequence many voters become indifferent and refuse to attend the polls, with the further result that more and more nominations are made by small minorities.

However much truth there may be in this mélange of assertions, they scarcely argue for a return to the caucus-convention system of nominations, particularly in municipal affairs. If the attendance at direct primaries is sometimes disappointingly small, as it is, it is almost always much greater than it was at the caucuses under the earlier system. This fact seems to be established beyond dispute. In many cases over half of the voters participate in direct primaries, and in those essentially one-party states where the primaries practically decide the elections, it is common to find the primary vote exceeding the vote at the final election. A return to the caucus-convention system, with its resultant diminution of the voter's power over nominations, could do nothing to the voter's interest except to decrease it.

The assertion as to minority nominations is doubtless true in many instances, although the figures are not nearly so conclusive as we have often been led to believe.[13] But even if we concede the truth of the statement, would it be better to return to caucuses and conventions? Where is the evidence that they more frequently did in the past or would in the future result in majority nominations? Is it not a fact that the party bosses want not majority nominations but merely majority ratifications of their own slates? Is it not a fact, too, that party leaders frequently made efforts to keep voters away from the old-fashioned caucuses, especially when there was danger of insurgency against their leadership, and that the delegates sent to the conventions

[13] *The Annals*, etc., Vol. CVI, pp. 137, 138, presents some pertinent figures for the state of Maine compiled by Professor O. C. Hormell. Of course much depends upon the basis used for determining a majority. There are probably relatively few cases of opposed nominations made by a majority of all the members of the party. If we take "majority" to mean simply a majority of those partisans who actually vote in the primaries, then there will almost always be a majority for one candidate when there are not more than two. There could be a "minority nomination" only in case there were three or more fairly strong candidates.

represented the party machine much more than they did the mass of the voters?

As to the increase in the number of candidates for nomination, the evidence is not at hand and probably never will be. No filing of candidacies prior to the nominations was required under the convention system of nominating. The records of the old city, county, and state party conventions might reveal something about the number of persons put in nomination, but they seem not to have been studied for that purpose. Furthermore in the days before the direct primary system came into use, far more than to-day, the good partisan who wished for a nomination to public office first went or sent to the local party boss to receive his approval. If he was asked to wait two or four years for the good of the party, he probably did so since it would be useless for him to go ahead alone, and his candidacy, consequently, was not heard of at the time, if ever. The insurgent member also was frequently not heard of as a candidate, for he probably knew that the situation was hopeless. To-day, no doubt, many of these once-repressed ambitions flower into actual candidacies, but certainly the figures as to the number of candidacies under the two systems cannot be compared.[14]

But if we admit, for the sake of argument, that there may be more candidates for nomination under the direct primary than there were under the caucus-conventions system, is it for the worse or for the better? In city affairs, at least, it seems likely that some men of ability now run for office who formerly would have had difficulty in coming forward because they were too independent. Just what qualities they add to the existing personnel of city governments we cannot say. To assert that they are mere suave vote-getters whose lack of solid qualities would have prevented their being nominated by a convention is to state what cannot be proved. This is, in fact, a matter upon which we have no adequate evidence. It lies in the realm of personal opinion.

There is finally the assertion that the voter is incapable of selecting proper candidates at a direct primary because he has so little knowledge of them. A statement like this can be only relatively true, relatively, that is, to the probable situation under some other nominating system. If it is put forward as an argument for returning to the caucus-convention system with its supposed party responsibility and leadership, it arouses the suspicion that perhaps it is desired to return to a system in which, by implication, the voters' judgment was not

[14] See for this point also *The Annals*, etc., Vol. CVI, pp. 137, 138.

relied upon in making the nominations. We pass over that point, however, to note that another argument frequently heard is that the direct primary system stretches the election process over too long a period and requires both voters and candidates to go through two campaigns. It is obvious that these two arguments in part contradict each other. When the campaign must go through two stages of direct appeal to the voters, the latter get two fairly extended opportunities to learn the merits and the views of the candidates. Under the convention system, on the other hand, sometimes only a month or two before the final election, candidates are put forward of whom the voters have had little or no previous knowledge. In the convention which makes the nominations there is no time for debate, and there need be no direct appeal to the voters until the final election. We need to remember that under any system the voters are not going to know enough about the candidates and the issues to ensure a perfect selection, and then to ask ourselves whether the longer or shorter period of discussion is desirable.

3. Another group of objections to direct primaries relates to the expense and inconvenience involved to the public, to the candidates, and to the individual voters. There is public expense involved by reason of the public control of the primary elections. The only direct cure for this situation is one not seriously proposed, namely, that the public give up all control over the methods of nomination. The expense to the candidate who must campaign for nomination over the entire state is no doubt considerable. In municipal affairs, however, this objection is not nearly so important, since traveling expenses, advertising, and nearly all other items depend materially upon the size of the area to be covered. It is not true, therefore, in municipal direct primaries that only the rich can afford to run for office. If it were true then there would be a very small number of candidates running, instead of which we meet the assertion that there are too many. The important thing for every candidate is to have the backing of some city-wide or ward-wide organization. A labor union may be more effective than a commercial club, despite its smaller financial resources. Indeed there are cases known of men who have been nominated for high municipal office almost wholly as the result of a personal canvass of the voters. Furthermore, here again we have no available data for comparing the old and the new systems of nomination. How much did it cost to get a party's nomination for the mayoralty under the caucus-convention system? We do not know, of course,

but it is generally supposed that the person selected had to make a liberal contribution to the party war-chest, if he did not have to do more.

As to the inconvenience to the voters there is not much to choose between the direct primary system and the convention system. Under the one he must go to the polls at some time during the day convenient to him; under the other he had to go at a set time to a caucus-meeting and spend from a half-hour to an evening there, if his vote was to have any effect on the nominations. However, it is scarcely necessary to argue this point since the voters show, by their greater attendance at direct primaries that they prefer direct primaries to caucuses.

The reader will not need to be told that as between the older caucus-convention system, and the newer direct primary systems of nominating for municipal offices, the writer is convinced of the superiority of direct primaries under present conditions. At the same time it is only fair to say that the urban politician, from his special point of view, has excellent reasons for favoring the older method of making nominations. The difference of opinion arises, no doubt, out of a fundamental conflict of attitudes. However much lip-service he may give to "the right of the people to rule themselves," the municipal politician usually feels that they need his advice and guidance. It is the writer's opinion, on the other hand, that no system of nominations to municipal office should be permitted which tends to give the political specialists a monopolistic control thereof, that the voters should be permitted freely to find political leadership wherever it may exist, and that the direct primary system under public control offers this greater freedom. At the same time it does not destroy parties or even weaken them materially. This is in no sense an assertion that the direct primary system is perfect either in conception or in operation. No student could seriously make a statement of that kind.

As between the various direct primary systems many reformers have come to favor the non-partisan primary as best adapted to municipal affairs. There are several reasons for this, but the fundamental one is a desire to free the cities as far as possible from control by the local branches of the national party organizations. The partisan primary, whether open or closed, tended to perpetuate national party lines in city politics, and where the primary was "open" it tended also to increase the ascendency of the dominant party over all others, for many voters flocked into the majority party primary. The introduction of the non-partisan direct primary, on the other hand, while it did not de-

stroy the local units of national parties, did nevertheless limit their powers and compel them to compete with independent groups for local power. In some places, as we have pointed out above, non-partisan primaries followed by non-partisan elections have helped to pave the way for the organization of new local parties founded upon distinctively local issues.[15]

SYSTEMS OF PREFERENTIAL VOTING

In our discussion of nominating methods we referred briefly to several plans by which it might be possible to dispense with nominating elections or conventions.[16] The first plan mentioned was that of nominating candidates by large petitions. The second plan, which is only partially successful, is that of having regular and supplementary elections. A third possibility is that of introducing some feasible system of preferential voting. As we said before, a voter going twice to the polls under our ordinary system of having first a primary and then a regular election can express only two choices. One he expresses at the primary, and the other at the final election. Why should he not be permitted to express these two or even more choices on a single ballot at one election? The difficulties which stand in the way of doing this in America are obvious but not insuperable. In the first place the voter must, as things now stand, vote a long ballot, and if he is to vote second, third, and other choices intelligently he must indeed have an encyclopedic knowledge of candidates. In the second place there are many different elections, and it will be confusing to the voters to use one system of voting in one election and an entirely different one in another. Thirdly there will be difficulty in agreeing upon a method of counting second and other choices, a point which we will discuss presently, and finally there is a constitutional obstacle to be overcome, since several state courts have declared unconstitutional various systems of preferential voting.[17] It will probably be necessary in some states, therefore, to have constitutional amendments adopted to authorize such innovations.

Where there are three or more candidates for a single office, and the voter is allowed to express first, second, and other choices as among them, what weight shall be given to each choice, and how shall the votes be counted? The *Bucklin* or *Grand Junction system* of voting,

[15] See pp. 221–226, above.

[16] See pp. 238–240, above.

[17] *National Municipal Review*, Vol. XII, pp. 743 ff. (1923).

which has had a fairly extensive trial in this country, is conducted substantially according to the following rules: The voter may mark his first choice for one candidate for a particular office, a second choice for another, and a third choice for a third. If, when the ballots are counted, one candidate is found to have a majority of all the first choices, he is declared elected and the count is at an end. If no one has such a majority, however, all the ballots are gone over again and a complete count is made of the second choices. The second choice total for each candidate is then added to his first choice total, and if anyone has a majority of the combined first and second choice votes he is declared elected. If there is still no election, then all the third choices are counted and added to the first and second choice totals. If any candidate then has a majority of first, second, and third choices combined, he is declared elected, but if not, then the highest candidate is declared elected whether he has a majority or not. There are times, in other words, when the voters do not show a majority for any candidate, and a plurality must be permitted to decide.

In this system, it will be noted, all the ballots are gone over for each recount, and all the second choices for each candidate are added to all his first choices, and so on. It will be seen also that the voter who votes second and third choices really militates to some extent against the chances of his first choice candidate being elected. This is so because the voter is forbidden to vote second choice for his first choice candidate, or third choice for either his first or second. Hence the voter who votes only a first choice really votes most effectively, and if any candidate could secretly induce his supporters as a whole to do this, his block of voters would give no second or third choices to any other candidate, but he would probably gather in a great many second and third choice votes from other less sophisticated electors. Electors and candidates soon learn this fact and unless they are forbidden to do so, assuming that it were legal to forbid them, the voters will in many cases mark only first choices. For this and other reasons the Bucklin system has not proved to be an entirely satisfactory system for both eliminating primaries and guaranteeing true majority elections.

The *Hare system* of voting by the single transferable ballot avoids the main defects of the Bucklin system. We describe this method of voting more fully in a later chapter on the election of city councils,[17] but it is also a practicable method of filling a single office by a majority vote no matter if there be three, four, or even more candidates. Under

[17] See Ch. XIV.

this system the voter marks his first, second, third, and other choices. When the ballots are first counted they are put into separate piles, *i. e.*, all the first choices for Jones in one pile, those for Gray in another, and so on. If any candidate has a majority of all first choices he is declared elected, but if not then the ballots of the candidate who has the smallest number of first choices are taken up and are distributed to other candidates according to the second choices marked thereon. Let us suppose Smith to be the low man with 1,500 first choice votes, as shown in the accompanying tabulation.[18] He is eliminated as a candidate, but the voters who wanted him as first choice are not eliminated. In some 500 cases they voted for Gray as second choice; in 250 other cases they voted for Brown as second choice; and in 750 cases they cast second choice votes for Jones. Whatever choices the voters have expressed must be respected in the transfer and in the count. Accordingly these 1,500 ballots are distributed among the three remaining candidates in conformity with the voters' wishes, and are added to the totals of these candidates. It is clear in this case that it was not harmful but advantageous to each one of these 1,500 voters to have voted second choices, for since their first choice candidate stood so low that he had to be eliminated anyway, their ballots would have had to be put aside as ineffective if they had failed to mark second choices. As it is, they are still going to have something to say about the outcome of the election, and although they wanted Smith as first choice, they did not in any way harm his chances of election by voting second choice for some other candidate.

Even with the addition of 500, 250, and 750 second choice votes respectively to their totals, neither Gray, Brown, nor Jones has yet a true majority of the votes cast. Brown, with 2,250 votes is now the low man, and is the next to be eliminated. His ballots are then sorted out according to second or next effective choices, and it is found that 1,250 of the 2,250 have voted next effective choice for Jones, and 1,000 have expressed a next preference for Gray.[19] Jones now has 5,500 votes, as against Gray's 4,500. Since the total number of votes

[18] See p. 250.

[19] It will be noted that we use the term "next" choice instead of "second" choice or preference. Suppose voter X marks his ballot for Brown for first choice, for Smith for second choice, and for Gray for third choice. When the time comes to transfer Brown's votes to other candidates according to the voters' expressions of choice, Smith is already out of the running. Hence the judges counting the ballots must consider in the case of voter X the "next effective choice," which in this case is for Gray.

cast was 10,000, of which a true majority was 5,001, Jones has a majority. He is declared elected.

Had the first choice votes in the case above given been cast at an ordinary non-partisan primary, Brown and Smith would have been eliminated in almost exactly the same manner as is herein described. Jones and Gray would have been the candidates at the final election and not only their supporters but also all those of Brown and Smith, if they were interested in the outcome, would have had to come back to the polls and to have voted a second time in the same way as is above described in order to accomplish the same result. Under the Hare system of voting, the entire result could be accomplished at a single election. No primary would be needed. In case it were deemed advisable to keep down the number of candidates, a nominating petition bearing a hundred or two hundred signatures of voters might be required before one could get his name on the ballot.

COUNTING THE VOTE UNDER THE BUCKLIN AND HARE SYSTEMS

I. Bucklin (Grand Junction) System of Preferential Voting

For Mayor	*1st Choice*		*2nd Choice*		*Total*		*3rd Choice*		*Total*	
Jones	3,500	+	2,000	=	5,500	+	3,200	=	8,700	Elected
Gray	3,000	+	3,500	=	6,500	+	1,800	=	8,300	
Brown	2,000	+	1,000	=	3,000	+	3,000	=	6,000	
Smith	1,500	+	3,500	=	5,000	+	2,000	=	7,000	
Totals	10,000	+	10,000	=	20,000	+	10,000	=	30,000	
Majority	5,001				10,001				15,001	

II. Hare System, the Single Transferable Vote

For Mayor	*1st Choice*		*Transfer of Smith's Votes*	*New Totals*		*Transfer of Brown's Votes*	*New Totals*
Jones	3,500	+	750	= 4,250	+	1,250	= 5,500
Gray	3,000	+	500	= 3,500	+	1,000	= 4,500
Brown	2,000	+	250	= 2,250	Next to lowest candidate; second to be dropped.		
Smith	1,500	Candidate with smallest number of first choice votes; first to be dropped; see transfer of his ballots.					
Totals	10,000					Majority	5,001

Note: We have here given an illustration of the two systems of voting in which both worked to the same result, *i. e.*, the election of Jones. A careful study of the two systems leads to the conclusion that the Hare system will be much more likely in the long run to give an accurate expression of the voters' will.

THE MUNICIPAL ELECTION

When the nominations have been made and it has been determined which persons are to have their names presented to the voters for election, there follows the campaign for votes. Any adequate description of a municipal campaign would require many pages, and while all large American cities are much alike and all campaigns have their points of similarity, it would be impossible to present a picture which would be true at all times and places. The bustle and the whispering at party headquarters, the quiet but arduous personal work of the precinct lieutenants, the large meetings with the bands present, the smaller meetings in halls, and the little gatherings on street corners and at factory entrances, the appeals and the thunderings of the newspapers, the cartoons and the declarations for particular candidates by long lists of prominent citizens, and then the last minute circulation of rumors, handbills, and "Roorbacks,"—these are all familiar to residents of cities. We must leave the many phases and angles of the campaign to the experience and the imagination of the reader.

Various cities hold their elections at different times. In colonial days and for some decades thereafter it was the rule to hold borough and city elections on days separate from those on which colonial and state elections were held. To some extent the electorates for the two classes of elections were different, and there was a less close organic connection between the central and municipal governments than came later to exist. Furthermore, the state and national parties had not yet perfected their organizations in all localities, nor had they come to rely so much upon spoils. In time, however, as the electorates for all elections came to be one and the same, and as party organizations rose and strove for control of all elective officers, there was a movement to put all elections on the same day. This played into the hands of the party leaders, and at the same time it was said to save the time and the money of the citizens. Not everywhere was this movement successful, but where it did succeed the party leaders, by the use of appropriately printed ballots and the steady pounding home of the advice to vote the straight party ticket, were able to march their voters like raw but willing recruits to the polling places where wholesale elections were conducted in a manner which wholly pleased the party bosses. No voter was supposed to stop to think before marking his ballot. Independent voting was not considered good form.

This is, no doubt, a somewhat extreme statement, for there were many local variations and there was always only a general tendency of affairs toward the ideal of the bosses. Nevertheless the tendency became so strong that in time a reaction set in. With more education, more economic freedom, and more habituation in the ways of self-government, many voters began to be restive, then independent or insurgent. In cities they demanded, among other things, the reëstablishment of separate municipal elections, and greater secrecy and security at the polls. The separation of elections came slowly and has not yet been achieved in all places, though the reformers have had it in their platform for over thirty years.[20]

A return to the healthy old practice of holding separate municipal elections is a good thing in itself, but it is also worth while to give some thought to the particular time at which city elections had best be held. In some places the city election has been put on the first Tuesday after the first Monday of November in each odd-numbered year in order to alternate in years with the state and national elections which occur in the even-numbered years. Cities which have annual elections, however, cannot do this. For the poorer classes who cannot leave the city either winter or summer, and who may be compelled to rely upon open-air meetings, a late spring, summer, or early fall date is preferable. This is particularly true in cities which have really cold winters. In the same cities a small upper class, many of whose members go South in the winter and are absent from the city also during the hottest months of the summer, find a late fall or a late spring date most congenial. The climate and the habits of the people must, then, be considered; and so must also the relationship of the election date to both the political and the fiscal year. If possible the election should occur not more than about two months before the time fixed for the induction of newly elected officers, and the fiscal year should ordinarily expire about six months after the new government has taken office. Thus, for example, if the election were held late in October or early in November, the officers elected should be sworn in not later than the first week in January, and the new budget and fiscal year should begin about July 1st following. This would give the newly elected government about six months in which to prepare budget and tax measures to carry out its policies. Better still might be the arrangement of having the election in late April or early May, the induction of officers about

[20] See for example *A Municipal Program*, 1900, of the National Municipal League, p. 176, constitutional amendments, sec. 3.

July 1st, and the taking effect of the new budget passed by them on the January 1st following.[21]

Elections, and also direct primaries, are generally under the control of the city council which in many places, as required by law or charter, uses the city clerk as its chief election officer. In some cities, however, there are special election boards organized upon the principle of giving each party some representation in its membership. Some weeks in advance of the pending election the council and clerk, or the election board, make the necessary arrangements, including the printing of ballots, the preparation and the printing of the various forms and books for making the returns, the designation of the boundaries of voting precincts, the renting of polling places, the providing of booths, flags, ballot boxes, pencils, and other paraphernalia required by law, and the appointing of a sufficient number of judges and clerks of election. Separate provision is also made for the registration of voters, and for giving them due notice of the pending election. Judges and clerks of election are frequently chosen with some regard to giving each large party some representation at each polling place, but the practice varies. It is, of course, part of the work of each party machine to help to make up lists of partisans who will serve in these capacities. This is done for the purpose of rewarding faithful workers, since these officials-for-a-day usually receive some compensation, and also to prevent the opposing party from practicing any fraud in the election. Naturally, many of the persons selected are intense partisans, and they are not selected primarily for their ability to do the work. Nevertheless there are probably some districts in every city where the election officials are fairly permanent and possessed of both capacity and integrity. The need is that of setting the same high standard everywhere.

While some cities use voting machines, and there are other minor variations in practice, the elections are generally conducted in very much the same way. The voter on entering the polling place finds usually a railing surrounding several tables, ballot boxes, and some small, curtained voting booths. At the tables sit from three to five persons, or sometimes more, who are acting as judges and clerks of the election, and outside of the railing there may be standing several other persons who are acting, perhaps, as party watchers and challengers, and possibly also a policeman. The voter enters the inclosure through a small gate or opening and comes directly before the largest table. The presiding judge of the election board asks him his name

[21] See Ch. XX for discussion of dates in connection with budget procedure.

and perhaps also his address, which he gives and which are then verified in a registration book held by one of the clerks or judges. If he is registered, is not challenged, and has not yet voted at the election, the voter is given an officially printed ballot, or in some places several ballots of different kinds, and he is then directed to a vacant booth at the rear of the room. He enters this with his ballot or ballots in hand, marks them in secret by putting a cross after the name of each candidate for whom he wishes to vote, folds the ballots so that the marks he has made cannot be seen by the election officers, and then steps out of the booth. He is then directed to pass by another table, or perhaps it is merely the other end of the same table, where stand one or more ballot boxes into which he is instructed to put his folded ballot or ballots. His name is then finally checked off in the poll book as having voted, and he goes out as he came in.

The effectiveness of the work done by the voter depends to some extent upon the length of the ballot he has to vote, of which we speak hereafter, and to some extent upon its form. Many different types of ballots are in use in American cities. (1) First there is the party column ballot upon which the names of the candidates for office are grouped in vertical columns by parties. At the head of each column there is usually some party emblem and in some cases there is a space in which the voter may put a single cross (X) to indicate that he votes the straight party ticket. This form of ballot is now less common in city affairs than it once was. It played into the hands of the bosses, for to some extent the watchers at the polls could tell whether a voter cast a straight party vote, which would take but a few seconds, or whether he was "splitting" or "scratching" his ballot.

(2) The party column ballot, just described, tends to be a wide and relatively not a very long piece of paper. A second form of ballot is that on which the candidates are grouped by office title, and are all put in one column, beginning perhaps at the top with the candidates for mayor and running on down through to offices elected by districts or by wards. In outward form this ballot tends to be long and fairly narrow. Ballots of this general type are to be found in two chief subvarieties, namely (a) those on which the party affiliation of each candidate is indicated, and (b) those on which no mention is made of party. The latter is, of course, the "non-partisan ballot." It is to be found in practically all cities having the commission or city manager plan of government, and in many others besides. Of its advantages we

have already spoken.[22] That form of office-title ballot on which party affiliations are given has some advantages for the intelligent citizen, over the party-column ballot. It brings under his eye in one group first all the candidates for mayor, second all those for comptroller or auditor, and so on down the list. He must go through the list, office by office, and express his preference under each one. The reformer may object that the printing of the party names will have undue influence upon him, and so no doubt it will, but still there is almost certain to be more independent voting with this ballot than with the party-column type.

(3) The ballot forms so briefly described above are the ones most commonly found in American city elections to-day. In addition, however, there are the various forms of preferential ballots already described above.[23]

When the hour comes which the law prescribes as the time for closing the polls, it is usual to permit all legal voters who are within the polling place at that time, to finish casting their votes. Thereupon the judges and clerks proceed immediately to make the count of votes and to enter the results upon the official forms previously provided. It is common practice to ascertain first of all from the check marks in the registration book or books, for sometimes two are kept, just how many electors have voted. The locks upon the ballot boxes are then opened, the ballots are counted, and this count is compared with the number of voters who have been checked off as having voted. Small discrepancies, if found, are noted, and may be overcome by careful recounting or rechecking. The count then proceeds. By this time there may be a number of persons in the room but outside the railing, for only the judges and the clerks are to participate in the count and to handle the ballots. The votes for each office and proposition are counted separately, and as the results are announced some persons rush off to telephone them to the party headquarters and to the newspapers. The counting in the larger precincts is likely to last through the night and into the next day, but the important results are generally known fairly early. When all the counting has been done and all the forms have been filled out, the ballots are again locked up in the boxes, and all the official paraphernalia and records are returned to the offices of the central election authorities under guard. The election is then over except for the final official "canvass" or review of the results, and any possible contests that may ensue.

[22] See pp. 224–226, 237–238, above.

[23] See pp. 247–250, above.

We shall not stop to speak at length of corrupt practices in elections. Every spoils party has its little fringe of hangers-on with shady characters who are ready to resort to colonizing, false registration, repeating, impersonation, vote-buying, and if need be to violence to control the local election. Candidates, too, at times spend more money than the law permits and spend it in ways not countenanced by the local corrupt practices act. The friends of a candidate also spend a great deal, and sometimes spend more than he does. The attempt to cure these evils by legislation has been only partially successful, yet we see, or think we see, a fairly steady improvement in conditions.

THE LONG BALLOT AND THE SHORT

When compared with his contemporary in a foreign country, the American voter appears to be an excessively busy person. Once each year the English voter must go to the polls to elect, usually, one councilman from his ward, and in addition also one or two unimportant officers called auditors. He is almost never asked to vote upon measures. On distinct days and at irregular but fairly long intervals he must also go to the polls to help elect in most cases but one member of Parliament from among two or three candidates. In France the elector once in four years votes for members of the Chamber of Deputies, and also once in four years but on distinct days for members of his city council. For the voters in these lands there are no such things as primaries, no task of electing judges or presidential electors, governors, mayors, and the numerous other ministerial and executive officers, practically no referendums, and no recall elections. In fact for them the work of voting has been reduced almost to its lowest terms.[24]

It is only in America that we really have the problem of the long ballot. Here it confronts the voter, as a rule, both in city, and in state and national elections, and also in the primaries which usually precede both. Those persons who live in a "short ballot" city, as under the commission plan of government, escape some of the burdens imposed upon voters in other places. In San Francisco, for example, the city-county charter provides for the popular election of the mayor,

[24] Munro, *The Government of European Cities*, pp. 17, 235, 304. In France, although the voters elect only the members of the city council in the local government, the ballot may be fairly difficult since it is the rule to choose not less than four councilmen from a district at one time, and the number elected at once may be very high when the city is not divided into districts.

eighteen supervisors at large, county clerk, auditor, district attorney, sheriff, coroner, tax collector, recorder, city attorney, public administrator, treasurer, and some four or more police judges, besides some others who are chosen at the legislative elections. So long was this list considered that the charter framers arbitrarily divided it into two, making half of it elective at one biennial election and the other half two years later.[25] In Minneapolis each elector must first help to nominate candidates for and then to elect a mayor, two ward aldermen (one each biennial election), treasurer, comptroller, members of the school, park, and library boards, several members of the board of estimate and taxation, and municipal judges, not to mention a number of county officers, district judges, and state officials who are chosen at separate elections. At a single municipal election he must help to fill about fifteen offices, and in so doing he must pass on the qualifications of double that number of candidates whom he helped to select at a primary from probably double that number of aspirants.[26] These two cities are not exceptional. Voters in New York city find that there is quite enough voting to do, and the election situation in Chicago is almost hopelessly confused.

Reason and experience combine to tell us that the voter is well-nigh helpless when confronted by a long, complicated ballot. He is unable to learn important facts about the qualifications of the candidates. Frequently he votes on a guess as to the merits of the men, or if there is a party label to guide him he follows that. If the ballot shows no party designations, he must seek advice in advance from those who have the information, *i. e.*, the interested politicians, or he must follow the advice of his favorite newspaper, which frequently has a distinct partisan bias, or he must vote blindly or refuse to vote at all for any office the candidates for which he does not know. In other words, to a large extent he must leave to partisan political specialists the choice which he himself should make both at the primaries and at the final election. Irresponsible oligarchy thus slips back into control under the forms of extreme democracy. A week after the election the voter scarcely remembers the names of many persons for whom he has voted. From seeing so many elective offices on the list he gets a mistaken notion as to their relative importance. Furthermore the official government lacks under the long-ballot system something of the unity and harmony which it needs, since every elected officer is

[25] *Charter of the City and County of San Francisco*, 1919 ed., Art. XVI, sec. 38a.
[26] *The Charter of the City of Minneapolis*, 1920, Chap. II, sec. 1.

entitled to feel himself to be as much the representative of the people as any other. This deficiency must be and is to some extent supplied by the unofficial party ring, "the invisible government," not selected by the voters, and working behind the scenes.[27]

These are some of the recognized defects of the American long-ballot system. Obviously enough, reform lies along the path of shortening the ballot, or of reducing the voter's work to the point where he can do it better than he now can. Fundamentally this is not a question of the form of the ballot at all, but of the form of the government. It involves a basic reorganization of the government, and the concentration in the hands of a few elective officers carefully chosen of the work and the power now scattered among many officials but poorly selected. The ballot will automatically become shorter when the number of elective municipal officials is reduced. It is clear, also, that the reduction in the number of elective offices need not mean a reduction but may mean an actual increase in the voter's control over his government. It was a tenet of Jacksonianism that the voters must choose as many as possible of their public officers directly, legislators, administrators, and judges. But what does it profit a voter to be able to elect his county surveyor or coroner, or the city treasurer or the clerk of the municipal court? These officers have duties of a routine administrative character. They decide no important public policies. It would be far better for the citizen if he could concentrate his thought as a voter upon a few outstanding policy-determining offices.

If the voter were to elect only those few officers who really decide important public questions, and if the entire municipal government were so reorganized that these few could control the others and could select them according to merit, a number of good results might be expected. First of all, the elector could vote more intelligently. Secondly, the elected public officials would be more visible because they would be fewer in number and would loom up as more important than before. We might expect, also, in the third place, that there would be less need of the invisible, unofficial government which now stands behind so many of our city governments, since the visible, official government would be better able to get the real power into its own hands. Fourthly, the government as a whole would be more unified and efficient, and there would be less of the constant bickering which

[27] See the address of Mr. Elihu Root in the *Revised Record of the Constitutional Convention of the State of New York*, 1915, vol. 4, pp. 3494–3505, on the invisible government in New York.

now goes on among numerous elected officers and boards in cities. Of course these desirable results will not all be brought about at once upon the adoption of a short-ballot plan of city government. Old traditions die slowly, political machines may be scotched but cannot easily be killed, and both the people and the politicians must be given time to get accustomed to the reorganization. The machine is usually against the short-ballot movement, and for this reason even this most rational of reforms comes slowly in many cities.[28]

REFERENCES

The law governing nominations and elections in cities is to be found in the general primary and election laws of the several states, in some special laws, in city charters, and in the adjudicated cases. Classified summaries of the case law on the subject of elections will be found in *Corpus Juris*, *Ruling Case Law*, the *American* and *Decennial Digests*, and in several digests of the law which exist now for a number of the leading states. The law of the subject has become so extensive and so complicated that a treatise in one volume would be almost out of the question.

Professor Munro has an adequate treatment of municipal nominations and elections in Chs. XIII and XIV of the first volume of his *Municipal Government and Administration*. Excellent material pertinent to the question will be found also in Brooks, *Political Parties and Electoral Problems*, Chs. X and XV, and in Ray, *An Introduction to Political Parties and Practical Politics*.

Primary elections, to which this chapter is largely devoted, are the subject of much printed matter. Aside from historical accounts, the best of the older works on this subject is Merriam, *Primary Elections*, Chicago, 1908. Ralph S. Boots, *The Direct Primary in New Jersey*, New York, 1917, is more recent and intensive. Valuable also is O. C. Hormell, *The Direct Primary*, with special reference to the state of Maine, Brunswick, Maine, 1922. The *National Municipal Review* since about 1919 has had some excellent articles on the subject, and *The Annals* of the American Academy of Political and Social Science, March, 1923, Vol. CVI, No. 195, is wholly given over to a series of excellent specialized articles on the subject. In this number of *The Annals*, and also in his book on *Popular Government*, Professor A. B. Hall presents some vigorous adverse criticism of direct primaries.

Since there is no up-to-date American book on the subject, the reader should consult the *Proportional Representation Review* published quarterly at Philadelphia, and also the *National Municipal Review* for discussions

[28] The problem of the short ballot is discussed to some extent also in Chs. XII and XIII, where we take up the forms of city government in the United States. A clever book on the subject by an effective protagonist is *Short-Ballot Principles*, by Richard S. Childs.

of the Hare system of proportional representation and the various systems of preferential voting.

The *short ballot* dogma is stated and explained in R. S. Childs, *Short-Ballot Principles*, Boston, 1911, in the extant pamphlets of the now defunct National Short Ballot Organization, and in items on the subject contributed from time to time to the *National Municipal Review*, which still carries on the propaganda.

CHAPTER XI

THE INITIATIVE, REFERENDUM, AND RECALL IN CITIES

In our analysis of the process of government in cities, we endeavored to make each step stand out clearly and to indicate the desirability of having each branch of the government do only that work for which it is especially qualified. The voters, for example, may be fully qualified to formulate general public opinion and to elect representatives who will attempt to carry out that opinion, and the right of the voters to do these things would probably not be denied. At the same time there has been much dispute over the question whether the electorate *en masse* is qualified directly to nominate candidates for office, to legislate, to elect administrative or judicial officers, or to recall them or their decisions. Certainly in the attempt to elect many officers, the voters have not consistently achieved good results. A civil service commission could by examination find much better qualified men for administrative positions than are usually discovered by the process of popular election. There are many persons who feel, therefore, that the voters would do much better by themselves if they limited their activity in government to what they can do really well.

To other persons it is, perhaps, only an abstraction to say that there are various types of work to be done in government and to draw fine lines of distinction to separate one sort of work from another. At any rate this is an idea not easily grasped by persons who have given little thought to problems of government. A democracy is not accustomed to withholding its own hand, and it is particularly averse to being excluded from any field of action because of its own alleged incapacity. The writer would urge anyone who doubts this mild generalization to go before any audience not specially selected for education or ability, and to present to them the twin doctrines of the short ballot and of the need of having experts or men of training selected by responsible officers and not elected by the voters for administrative and judicial work. Both of these reforms move, of course, in the direction of curtailing the average voter's direct participation in government. The speaker will find in almost every audience some intelligent

receptiveness toward his ideas, but he will also find much tough resistance and some strenuous opposition. In short, the voter has a large if unreflecting confidence in his ability not only to control his government, but also to participate in its various activities.

Direct popular government is not a thing of which the American voter is afraid. In many cities the long arm of voter-control stretches into every department of the whole governmental and administrative machine. He nominates, elects, and helps to control judges, administrative officers, mayors, and councilmen. In many of them he has the power of recall. He is permitted to act with his fellow voters in initiating ordinances and charter amendments, and with them he may by petition require that certain acts passed by the council be submitted to the voters for approval before they go into effect. It is this system which we usually denominate "popular" or "direct government." That it is seriously upsetting to the normal processes of representative government can hardly be denied. It is not our function to condemn, however, but to analyze and to explain, and at the end to attempt to say whether the situation is really as bad as some picture it to be, or better or worse.

THE REASONS FOR DIRECT LEGISLATION AND THE RECALL

Back of the modern movement for the initiative, referendum, and recall lie many decades of struggle for the improvement of the governmental process. Widespread political developments usually have behind them some grievances. In this case it was in part the loss of popular confidence in city councils and state legislatures, a loss arising out of their supposed or actual corruption, irresponsiveness, and inefficiency. The writer is not inclined to put much stock in the so-called "decline of legislative bodies." When if ever was there a golden age of perfection among legislative bodies? The term "decline" as applied to them is found upon examination to cover not so much a real retrogression or decadence as a failure of legislatures at any time to come up to the romantic expectations of early democratic idealists. A great many 18th and 19th century reformers undoubtedly expected too much from representative institutions, or at least they promised too much for them.

If is true, however, that during the second half of the nineteenth century and on into the beginning of the twentieth century, a number

of state legislatures and city councils in America were found to be corrupt, boss-ridden, or lobby-controlled, and altogether inadequate to the performance of their numerous duties in a complex and rapidly changing society. In one way or another they failed to attain the ideal, and it was this fact which led to general popular revolt, notwithstanding which there is reason for believing them to have been definitely on the up-grade even before the movements for the initiative and referendum were well under way.

In a subsequent chapter [1] we shall describe at greater length the rise of popular distrust of city councils and advert to some of the expedients to which the people resorted to check council action. In most cities the mayor was given the veto power; in a considerable number the council was divided into two chambers, in order that one might check the other; long, detailed provisions were written into charters requiring publicity and a definite procedure for all council actions; and strict limits were put upon the powers which such bodies might exercise. The steady rise of the initiative and referendum in municipal affairs may be considered as a part of this general movement.

It would be perhaps wrong, however, to picture the people as being so distrustful of city councils that they cast about for some invention, some entirely new political device, with which to curb their excesses. Direct participation by the voters in local governments existed in certain forms and to some extent from the very beginning of local government in America. Thus of the cities which developed out of New England towns or were influenced by New England traditions, some retained the town meeting alongside of the council, and certain important measures, such as the annual budget and tax levy, could be enacted only in the town meeting. Here was a definite popular check upon the council's action. Charters and charter amendments were also frequently referred to popular vote, just as in the case of state constitutions and constitutional amendments, and so too was the question of licensing saloons under local option laws, which was considered a fundamental question. In fact the referendum in some form has existed from early times in America. The peculiar form in which it came later to be widely adopted was, indeed, partly of foreign origin, but the way for it had been paved by American practice and experience.

Even the initiative, or the right of a certain percentage of voters to initiate measures, had been preceded by the ancient right of petition and also by the more concrete local practices of petitioning for local

[1] Chapter XII.

improvements, for the organization of cities, for changes in boundaries, for the establishment of schools and welfare institutions, and for the removal of county seats. Under many of the laws providing for such petitions there were definite clauses making a petition necessary to any action in the particular case, and also requiring that the final decision be referred to the voters at an election, just as in the case of the modern referendum.

The popular recall, on the other hand, seems not to have had any direct forerunner in the United States. Terms of office in local government were almost everywhere fairly short and fixed, with the result that ousters from local office even by court or council action were infrequent because they were unnecessary.

The initiative and referendum, as they are commonly known to-day, were written into the charter of the city of San Francisco adopted in 1898, but they had already been sanctioned for local purposes by law of California as well as in Iowa and Nebraska, and in 1899 they were also authorized for municipalities in South Dakota. The power of the voters to recall municipal officers probably first appeared in America in the Los Angeles charter of 1903. In 1907 the city of Des Moines wrote all three of these devices into its new commission charter. The subsequent propaganda for "the Des Moines plan" of government served to carry the gospel of direct government to cities all over the country. Furthermore, at a time when commission government was considered dangerously radical by many people, it was recognized that such conservative checks upon the city commission might prove to be desirable things. At any rate they spread from place to place, sometimes being adopted as charter provisions in particular cities, in other cases being authorized for cities by general state law. All three are to-day to be found authorized in a large number of cities having the commission and city-manager plans of government, and one or more of them exist also in such cities as Detroit, St. Louis, Los Angeles, San Francisco, Seattle, Denver, and others under various other plans of organization. Many of the larger cities of the East and Central West, such as New York, Chicago, Philadelphia, Boston, Pittsburgh, and Baltimore, do not have them, however.[2]

[2] Information for the different cities must be derived primarily from city charters and state laws. For the commission-governed cities there is also the *Loose Leaf Digest of Short Ballot Charters*, edited by Dr. C. A. Beard, 1911, now unfortunately somewhat out of date; and for cities under the city manager plan there is the *Loose Leaf Digest of City Manager Charters*, 1923, by R. T. Crane.

HOW DIRECT GOVERNMENT WORKS

The initiative. The initiative may be defined as the legal power of a given percentage of the voters to draft and to submit measures for adoption as ordinances or as charter amendments, and to require a public referendum thereon in case the council fails or is not empowered to enact them. While the procedure is not uniform in all cities, we may visualize it as taking ordinarily the following steps: Some element in the community desires the enactment of an ordinance or other measure which the council cannot or does not see fit to pass. Thereupon certain persons desiring its passage form a committee, complete a draft of their measure, make a number of copies of it, and then proceed to circulate petitions for signature by electors who are in favor of its provisions. City charters make various provisions as to the number of signers required. In some it is as low as five per cent or less of the number of electors voting at the last city election, and in some it is as high as twenty-five per cent. In the larger cities the requirement is frequently ten or fifteen per cent.

When the petitioners think they have enough signatures to comply with the law, they deliver a certified copy of the measure together with all the signed petition papers, properly certified, to the city clerk or to some other officer designated by the charter for the purpose. The latter is required to check over the signatures and the addresses of the signers, to ascertain if possible whether the signatures are those of legal voters, and whether any voter has signed more than once, and finally to count the valid signatures to determine whether they are sufficient in number to comply with the requirements of the charter. If there is any defect, or any deficiency in signatures, the petitions are returned to the circulators who may then proceed to correct the papers or to obtain additional signatures. If nothing is wrong the measure and the signed petitions are laid before the council at its next regular meeting.

If the proposed measure is a charter amendment, the council has practically nothing to do except to provide for an election for its adoption. In the case of ordinances, however, the council is usually given a period within which it may consider the measure and either adopt it or reject it. If the council adopts the measure without change as an ordinance, nothing more need be done. This is not likely to occur, however, and then the next step must be taken of submitting the measure to the electors for their approval or rejection. The petitioners are

probably desirous of having the measure acted upon at an early date, and at a special election, whereas the council majority and other opponents of the proposal are likely to desire postponement of the popular vote until the next general election. Some charters provide for this contingency that if the number of petitioners equals we will say twenty per cent of the voters, a special election must be called upon the measure within 60 or 90 days, whereas if only ten per cent of the voters have signed it the vote may be put off until the general city election next ensuing. Ultimately, however, the measure comes to a vote. The ballot, following a brief description of the measure, gives the voters the opportunity in separate squares to vote "Yes" or "No," and as a rule the issue is settled by a majority of those voting on the measure.[3]

Questions are sometimes raised as to the binding force of an initiated ordinance adopted by the voters as compared with one which has merely passed through the council. In some charters and laws definite restrictions are put upon the power of the council to amend and to repeal such ordinances, but as a general rule both classes of measures may be considered to stand upon the same plane legally. The only real difference between them is a political one. A council would hesitate to emasculate or to repeal an ordinance adopted by a majority of the voters.[4]

The referendum. The referendum in municipal affairs in America is found in at least three different forms. (1) For many years there have been requirements in state constitutions, general laws, and city charters that certain types of measures such as charters, charter amendments, grants of street franchises, and bond issues, and in the past liquor regulations, must always be submitted to a vote of the electors. This, the older form of the referendum, was a distinctly conservative device which aimed to give the voters a check upon the council for the protection of important public interests. Having been designed for this purpose it seems to have met with general favor, or at least it never had to face the nation-wide campaign of opposition which came later to be directed at the referendum in the other form.

(2) What may be considered a second form of the local referendum is to be found in the council's voluntary reference of some questions to

[3] Some states have higher requirements for the adoption of charters and charter amendments, however.

[4] The writer has not found any important decisions upon the question of the supposed superiority of initiated ordinances and those adopted by popular vote over those merely passed by the council.

the electors. Where the charter gives the ordinance power to the council, and confers no law-making power upon the voters, the reference to them of any measure can legally amount to very little more than a request for advice. The voters could not under such conditions give legal effect to any measure which they approved. Nevertheless, councils do occasionally pass ticklish matters over to the voters in this extra-legal manner, and if the measures so referred are complete in themselves and have been completely enacted by the council, so that the favorable vote of the electors can be looked upon as a mere future contingency upon the occurring of which they shall go into effect, the courts will look favorably upon them.[5]

(3) The newer and more controversial form of the referendum has been well named the "protest," but unfortunately the latter term has not persisted. It may be defined as the legal power of a given percentage of the voters to protest against the enforcement of a newly enacted ordinance and to require a public referendum on the question of whether it shall go into effect. In this form the referendum has been used in America for only about thirty years, though it had been in operation in Switzerland for a long time previously.

The process begins with the passage by the council of some ordinance or resolution which is distasteful to some group in the community. In charters and laws establishing this form of the referendum it is usually provided that no measure except an "emergency measure" and certain other measures named, shall take effect until the expiration of 30, 45, or 60 days after its enactment by the council. Emergency measures and certain others may take effect at once.[6] All other measures are held in suspense during the period designated for the purpose of permitting dissatisfied voters to file a protest petition. The percentage of voters needed to complete such a petition varies from place to place, but it is generally higher than in the case of the initiative. As in the latter case, however, the completed petitions are filed with some local officer, usually the city clerk, for check and verification. If the petition is complete and correct, and is filed

[5] For the discussion of a related or similar problem, see the articles by Professor McBain in the *Political Science Quarterly*, vol. 32, pp. 276–95, 391–411 (1917).

[6] State legislatures are known to have abused the right to pass emergency measures and to put them into effect at once, and they have probably passed many measures as emergencies for the primary purpose of preventing a referendum. The evidence as to what city councils have done in this regard is less complete, but there seems to have been less tendency to abuse the privilege.

within the time limit, the measure in dispute is held in abeyance until a popular vote can be had upon it; if not, then the measure goes into effect at the end of the period prescribed. In either case, however, it may be repealed or amended by the council.

When an ordinance has been suspended by the filing of the petition, the petitioners have gained their first point. If the council which has passed the ordinance, and presumably desires it to go into effect, wishes a quick decision by the voters upon it, it may as a rule call a special election within not less than 30 or 60 days. The possible expense of the election may prevent this, however, and there may be no reason for haste. In that case the final decision may be put off until the next regular city election. Finally the question comes to the voters upon printed ballots bearing the usual "Yes" and "No" spaces. As a general rule a majority of those voting upon the proposition prevails. If the ordinance is defeated by the popular vote, the council may still attempt to reënact it, or to reënact it with amendments, but of course the voters also have in the protest a continuing checking power.

The recall. The recall may be defined as the legal power of a given percentage of the voters to require the holding of an election upon the question of removing some public official from office before the end of his term. The word "recall" seems to imply calling back into private life a person who was previously called therefrom to fill an official position. As a rule the power of recall applies only to elective officers, but there are some notable exceptions. In Dayton, for example, the appointed city manager may be "recalled" by the voters who have not directly called him.

The procedure begins with the development of an opinion among a few or many people that an incumbent in official position is unfit for his place. A committee unofficially organized for the purpose prepares a statement of objections to the officer's continuance in his post, and sets out to find signers to the petition against him. The requisite number of signers is usually high, being seldom less than twenty-five per cent of the number of voters who cast ballots in the last preceding election. When the petitioners feel that they have enough signers, they deposit their petition papers with the city clerk or other designated officer, who proceeds to count and to verify the signatures. If the petition is found to be legally sufficient, it goes to the council which is required to call a special election within a period of time specified in the law or charter. In the meantime the official against whom the petition is directed may resign if he wishes to do so, but he is more

likely to issue a reply to the charges and to prepare to contest the recall. If he should resign the vacancy created would be filled at a special election or in some other way designated in the charter. If he does not resign the council has nothing to do but to order a recall election.

In the early charter provisions for the recall it was usual to specify that the incumbent's name should appear on the recall ballot along with those of other persons who might be nominated to succeed him. The question put to the voters was not, then, the specific one of recalling or retaining the incumbent, but was that of whether they preferred to have A, the incumbent, or B, or C, or possibly D occupy the office. Now in the original election there might have been different contesting candidates, and there might even have been only two, let us say A and E, and A may have won by 30,000 votes as against 20,000. In the recall election, on the other hand, there may be more or fewer candidates, and the vote may be larger or smaller, and either more or less split up. The conditions under which the two elections are conducted may, in other words, be quite different. At the recall election A might receive 18,000 votes; B, 22,000; C, 4,000; and D, 2,000. Candidate B would then succeed A in office, although he received a vote far smaller than that obtained by A in a better attended and more clear-cut election some months before.

The possible defect in this method of operating the recall led to several different proposals for improvement. The most important was that put forward in the Model Charter of the National Municipal League.[7] This provided for a separation of the question through the use of ballots printed substantially as follows:

RECALL BALLOT	
OFFICE OF MAYOR	
Shall A____ be recalled?	Yes ☐ No ☐
Candidates for the position of mayor in case A____ is recalled. Vote for one.	
B_____	____
C_____	____
D_____	____
_____	____

[7] Model charter, sec. 15, note 12, in *A New Municipal Program*, edited by C. R. Woodruff, pp. 321–23.

Here, it will be observed, there is opportunity for a more clear-cut expression of opinion, and the incumbent cannot be recalled unless a majority of those voting the recall ballot favor such action. This obviously gives the incumbent a better chance of retaining his office, or at least it concentrates the voter's attention first upon him. He does not run a new popularity race against the other candidates, and his name does not appear on the lower half of the ballot among those of other candidates. If a majority do not vote against him, he remains in office, and it is then unnecessary to count the votes cast for B, C, D, and others. Of course, even the elector who votes to retain A may and should also express his choice as among the other candidates.

ARGUMENTS AGAINST THE INITIATIVE AND REFERENDUM[8]

As we have said above, the older forms of the referendum were not the products of alien invention, and did not meet with strenuous opposition. There was, of course, some opposition to particular applications of the older local referendum, as in the case of brewers and saloonkeepers opposing local and county option referendums, and public utility interests objecting to popular votes on franchises, but the principle of the referendum in this form as such was not seriously attacked. The protest and the initiative, however, although they were in a sense but further developments of typical American institutions, met with an entirely different reception. From the beginning the opposition came from conservative sources, *i. e.*, from people who wished to preserve what they deemed to be the true American system of government through representatives. They even went so far as to picture these new devices as an attack on the American constitution.

Out of the controversy which raged for a number of years, and which still continues though much abated, a series of arguments was developed which we attempt to state and discuss below. Before doing so, however, we wish to utter once more several words of caution and limitation. In the first place we are interested in these several devices

[8] Arguments for and against the initiative and referendum will be found in the following: Delos F. Wilcox, *Government by all the People*, New York, 1912; James D. Barnett, *The Operation of the Initiative, Referendum, and Recall in Oregon*, New York, 1915; Edith M. Phelps, ed., *Selected Articles on the Initiative and Referendum* (Debaters' Handbook Series), White Plains, N. Y., 1914; A Lawrence Lowell, *Public Opinion and Popular Government*, New York, 1913; and A. B. Hall, *Popular Government*, New York, 1921, Chs. III, VI.

primarily as they operate within cities and upon municipal problems. A city has not the extensive law-making powers of a state legislature, and its acts, whatever they may be and however enacted, are usually subject to revocation by the state legislature and to a strict scrutiny by the courts. Hence the dangers which might inhere in the statewide initiative and referendum can hardly be said to lurk in the same devices when used locally in municipal affairs. In the second place, it should be noted that we have here not a problem in absolute values, but one in the relative merits of council action alone, and of the same council action supplemented and checked by the initiative and referendum. There is by no means any question of completely ousting or abolishing the council, nor even of seriously diminishing its powers. It deserves in fact to be noted that the initiative, referendum, and recall have to a large extent all come into American city government on the heels of or in company with the commission and city manager plans of government, both of which have meant a considerable increase in the powers of the council.

1. Both the initiative and the referendum are adversely criticised first on the ground that the electorate as a whole is unorganized for the discussion of measures, and that it is uninformed about most of the matters which come before a legislative body. As a body the people can know only the general and basic principles of government, and to ask them to know more is to request them to use their time wastefully, since a small number of councilmen could do the work better. In fact, they will not give the time required for study, and thus if they vote at all they will do so ignorantly. There can be no public opinion on the details of legislation, which is, after all, the work of experts or at least a task requiring special attention. In many cases the electors will not vote at all, which results in minority rule (and it may well be the rule of an interested, selfish minority), or else they will, in exasperation at the task, vote "No" without discrimination.

It is further argued in the same vein that ordinances initiated by committees of the people will be poorly drafted, that they will not be in harmony with those already on the books, and that in the drafting there will be no opportunities for compromises and concessions. Visionary reformers will draft their measures in extreme and unworkable form, and the voters will have to adopt or reject them as they are.

To all of this the defender of the initiative and referendum finds answer somewhat as follows: Granting that the voters are uninformed about legislative matters before they have the power of the initiative

and the referendum, the latter devices are still defensible for the very reason that they compel the voter in his own protection to study public questions as never before, and thus work toward his political education. In cities it is said to be particularly easy to reach the voters with the necessary information, for the people are all easily within reach and the questions which they must decide are more local and perhaps more simple than those confronting a state government. And, it is further asked, how much better qualified is the council to solve the problems of the city? And is it true that council action guarantees majority rule? In many cities measures may be passed by a majority of the members present, which may be a minority of the whole body, but even a real majority of the members may, and often does, actually represent a minority of the people.[9] This fact is established by the numerous cases in which the popular vote has rejected measures previously enacted by the council. So also it is said with much truth that a faction which is so much interested in its project as to be willing to go to the pains of initiating an ordinance and getting a large number of signers to support it, will probably be careful to have it well drafted and to have all "jokers" left out. This is, in truth, held to be a chief advantage in the initiative process, since many of the so-called "compromises and concessions" in everyday ordinance-making are really only clauses inserted for the weakening of the whole measure. The reformer can put his simon-pure product before the voter through the initiative and referendum.

2. A second group of arguments against the initiative and referendum shows a curious confusion in thinking. It is said, on the one hand, that the action of the voters will be hasty, ill-considered, rash, the result of whim, caprice, passing fancy, or the sudden fanning of the flames of prejudice or hatred; while on the other hand it is asserted that these devices are excessively slow and cumbersome, and ill-adapted for their purposes. To arouse and to inform the entire public for the purpose of passing a minor ordinance is ridiculed by comparing it to the cracking of nuts with a trip hammer. What the opponents of the intitiative and referendum have here done is to take two extreme possibilities and to magnify them into a condemnation of the whole system. Obviously the same arguments could be used against every legislative body in existence. Even Congress, cumbersome as it is, has at times acted with extreme haste, while at other times it has spent days and days of valuable time haggling over details in very

[9] See below, pp. 354–56.

minor bills. In fact, so far as haste is concerned, how many bills are not rushed through so-called "deliberative assemblies" in the closing hours of crowded sessions without a word of debate! It is one of the purposes of the protest or referendum power in the voters' hands to defeat such hastily passed measures. The referendum is, in a sense, a clumsy additional check upon hasty legislation. And so far as the initiative is concerned, he speaks without knowledge of the facts who thinks that any measure can be initiated and be subscribed to by thousands of voters and then passed at an election "hastily." In any city of size this process is long and difficult, giving the opposition to the measure ample time to organize its forces.

The simple truth seems to be that the initiative and referendum are both somewhat cumbersome methods of getting results, and that as soon as the voters learn this essential fact they will probably use them less and less frequently. There is already some evidence pointing in this direction. The electors seldom use these devices to accomplish wholly trivial results. In the long run they will both be operated successfully only on important measures upon which the electors really have some opinion. This is not to deny that the voters do pass some measures about which they are only partially informed, just as city councils and state legislatures do, but simply to say that if a measure is important enough to arouse opposition the voters are fairly certain to get information and opinions about it and to act with a fair degree of shrewdness when they vote.

3. It is sometimes said that the initiative and referendum in their modern form are un-American and contrary to the American constitution. The national supreme court, which is our final arbiter on what is constitutional, has made it fairly clear, however, that there is little in this statement. The federal constitution takes no notice of the forms of government in the local subdivisions of the states. It is for the states to settle these questions themselves. Furthermore, even state constitutional provisions such as those providing for the separation of powers in the state government, have no direct application to the form of government of the local units such as cities. Finally, both national and state supreme courts have recognized the obvious fact that the referendum and the initiative have both had honorable precursors among American institutions, and have had a fairly steady development from colonial days down to the present. Direct popular government in local units was not considered contrary to the constitution when that document was adopted. Indeed, New England town gov-

ernment was usually highly praised by early American statesmen. Moreover the initiative and referendum are not forbidden by any express constitutional language to-day. Certainly, then, they are neither un-American nor unconstitutional.[10]

What the opponents of the initiative and referendum really have in mind is that these devices provide for direct or popular government, democratic government in the old sense, as distinguished from representative government. Our government is construed to be of a purely representative form, and these new powers of the voters are construed to be an attack thereon.[11] It is true that they are to some degree upsetting to the regular processes of strictly representative government. In this respect, however, they are probably less harmful in their effects locally than are other deviations from the normal process of government. The separation of powers is itself in some respects such a deviation, and so is the attempt to permit the voters directly to control both executive (or administrative) and judicial officers through popular election. Voters are not required to use the initiative and referendum, but they are required at regular intervals to consider and to pass upon administrative and judicial matters in the election of administrative and judicial officers. Whoever wishes to restrict voters to their normal function in a purely representative government must go the whole length of advocating the abolition of the separation of powers, the establishment of parliamentary or cabinet government for state and nation, and pure council or council-manager government for cities, and the shortening of the ballot by placing thereon the names of candidates for only legislative or policy-determining offices. Once the bars are let down, as they have been for so long in the United States, to voter-participation in legislative, executive, and judicial business, there will always be a strong tendency toward still more participation. To many persons the saying that "the cure for the ills of democracy is more

[10] Some leading decisions are as follows: Pacific States Telephone & Telegraph Co. *v.* State of Oregon (1912), 223 U. S. 118, 56 L. ed. 377; State of Ohio *ex rel.* Davis *v.* Hildebrant (1916), 241 U. S. 565, 60 L. ed. 1172; *Ex parte* Pfahler (1906), 150 Cal. 71, 88 Pac. 270, 11 L. R. A. (N. S.) 1092. And see also *Complete L. R. A. Digest*, 1922, Vol. II, pp. 2123–24; Vol. V, pp. 5266–67.

[11] The opponents of the initiative and referendum have also opined that legislative bodies would become so weak and insignificant where the initiative and referendum and recall are in operation that men of ability would no longer seek membership therein. There is as yet no body of credible evidence to show that any such decline has occurred. Legislators have as much and as important work to do as they ever had.

democracy" is a bit of political gospel which is interpreted to justify increasing the activities of the electorate.

But in truth purely representative government in local and municipal affairs is distinctly a late development. Certainly the early English and colonial communities had a great deal of popular participation in every stage of the governmental process. "Local self-government" came to mean popular or direct government in the English system of local administration, and this idea was transplanted with variations to the English colonies in America.[12] The people themselves as a body, at least in theory, sat as judges and jurymen in the local courts, and in the same undifferentiated bodies they did all local legislative and administrative business. Not until later did the idea of representative government grow up, and still later (perhaps) came the drawing of distinctions between legislative, administrative, and judicial business, with the designation of different persons for different functions. The English people in the course of the 19th century did finally establish a system of almost purely representative government in municipalities.[13] In the United States we are still in the older stage of extensive popular participation. We stress these points in order to show that the true conservative, if he really wishes to make his stand "upon the ancient way" should advocate retention of the initiative and referendum as means of true popular self-government.

4. There is also the argument of fear, sometimes expressed, that with the initiative and referendum powers in hand the voters will set out upon a path of radical, socialistic, or revolutionary legislation. Municipal governments, we have already said, have little power to do anything novel or far-reaching. They are under legislative control, they may not do anything not authorized by law or charter, and the courts stand always as the bulwarks of property and personal rights. The danger would therefore seem to be very slight.

Even if we could think of these barriers as all removed, however,

[12] Joshua Toulmin Smith, *Government by Commissions Illegal and Pernicious*, etc., London, 1849, pp. 49–52, and also Ch. III, "Of local self-government," and his later work on *Local Self-Government and Centralization*, London, 1851; Sidney and Beatrice Webb, *English Local Government*, IV, *Statutory Authorities for Special Purposes*, p. 445.

[13] Prior to the establishment of representative councils in boroughs and counties, however, Sturges Bourne's act of 1818 for the government of parishes attempted a return to more popular government by providing for the referendum. The results appear to have been unfortunate. Sidney and Beatrice Webb, *English Local Government*, I, *The Parish and the County*, pp. 166–70.

there would be little to be feared. Unless the argument for "representative government" is that the people's chosen representatives will misrepresent them, the supposition must be that the chosen representatives of the people will go as fast and as far as would the people themselves. In fact one of the strongest arguments against the referendum among certain Socialist and labor leaders in England is just this, that the voters move too slowly. If you have to wait until you get the whole mass of the people educated to go along with you, you will never reach your goal. The Bolshevist régime in Russia had to set up the dictatorship of a very small group in order to accomplish its purposes. The mass of the people moves slowly. It prefers things as they are, in the main, and it wishes to be let alone. In America where the laboring man is unusually well off, he shows at times a most surprising conservatism. The extreme left-wing parties make always a pitifully small showing in elections and in other ways. Their strength is, furthermore, nearly always among the newly-arrived immigrant class. We cannot predict what changes time may bring, but even if the poorer classes should become much more disaffected than we can now foresee them to be, they would undoubtedly be far more conservative and slow-moving than their leaders and elected representatives.

Indeed, we have seen this curious transformation of opinion on the question in hand that, while the initiative and referendum were undoubtedly strongly urged between 1890 and 1915 by so-called "progressives" who had measures to enact to which councils and legislatures would not pay heed, to-day the same elements pay much less attention to these devices. They have learned to their sorrow that the people are hard to convince. They are too conservative by half. Time and again they have rejected "progressive" proposals such as the single tax, extensive public ownership bills, and other similar measures. It is interesting to note also, in passing, that the opponents of the initiative and referendum have yet to discover a single measure to point to as the horrible example of radical action through the initiative and referendum. For every one that might be named it would probably be easy to find several like measures enacted by ordinary legislative processes. The conclusion would seem to be, then, that in cities as well as elsewhere, the initiative and referendum have proved to be not radical but essentially conservative.[14]

[14] Probably the most radical measure ever submitted to the voters of Switzerland was that providing for the capital levy. For an account of the conservative outcome of the voting, see the *Political Science Quarterly*, vol. 38, pp. 290, 361 (1923).

5. There are some miscellaneous arguments which are worthy only of mention. The passing around of petition papers is tedious and expensive work, and is a nuisance to those who are asked to sign their names. Sometimes men are paid to do the work at so much per name, and they appeal to the voters to sign just to help them out. For this and other reasons many persons sign thoughtlessly, and some sign fictitious names. It is a considerable public expense to check over these lists, and to hold the needed elections. These and other like objections are not fundamental, and we may pass them by.

In conclusion we may fairly say that some if not most of the current arguments against the initiative and referendum when applied to municipal affairs rest upon untenable premises. These instruments have some value in local government, although it is frequently greater in theory than in practice. They also exhibit certain patent defects. Potentially they may serve to educate the voters, but in practice this advantage is not fully realized. People who have other affairs to attend to display a lack of interest in, and an imperviousness to education about public affairs which is a constant source of dismay to inexperienced reformers. Even in a city of moderate size a great amount of organized effort is required to bring home to the voters a very simple proposal. Furthermore not all cities provide for the printing at public expense of pamphlets of information about pending measures. That the initiative and referendum do serve as a check upon, or at least as a possible warning to city councilmen, can scarcely be denied, although the power of recall is probably a better "gun behind the door."

Whatever defects there may be in the drafting of initiated measures could be corrected to some extent by the requirement that the city attorney be required at some stage in the procedure to examine the measures and to suggest improvements therein. Fraud and carelessness in the signing of petitions could more easily be detected if there were permanent registration of voters upon cards bearing the voters' signatures and addresses.[15] The danger of minority rule could be overcome in part by requiring that any initiated measure to be adopted must receive a majority of all votes upon the proposition, and not less than 35 or 40 per cent of the total vote at the election, and that any protested measure (already passed by the council) should become

Some interesting facts are also to be found in *The American Voter as a Lawmaker*, a pamphlet by Judson King published by The National Popular Government League at Washington about 1923.

[15] See pp. 182–183 on the registration of voters.

effective unless opposed by the same percentage of voters. Still more conservative would be the requirement of a majority of all those voting at the election. The writer does not propose these changes, but suggests that they afford easy means of overcoming one supposed defect in the initiative and referendum.

The introduction of various little improvements in the procedure in each case would also overcome many current objections to them. Fundamentally, however, neither the initiative nor the referendum has given the public any real cause for worry in municipal affairs, for after all is said, popular votes upon measures are but one means of giving expression to public opinion. The only possible danger lies in over-using them and over-burdening the voter, for this is a case where the worst abuse is over-use, but even this danger has not yet materialized. Since the voter's chief function in government is controlling it and not doing its work, the voters should keep these new instruments for purposes of control, and should use them only in urgent cases. The people themselves will reap the greatest benefit in the long run by developing the council as the chief organ of local legislation. There is some evidence that already the voters are learning this lesson, and that they are using their new powers of direct legislation less than was at first expected. Probably not one per cent of all local ordinances adopted from year to year in cities having the initiative and referendum are put to the test of a popular vote, although the voters in some places probably make a more extensive use of their powers.[16] We do not suggest, however, that these powers should not be used at all. On the contrary, nothing will help so much at times to clarify the air, to relieve a tense local situation, and to restore good feeling in the community as to let dissatisfied voters have their repressed measures or those to which they strongly object brought out into the free air of public discussion and put directly to the test of a popular vote.

THE RECALL FURTHER CONSIDERED

The recall is wholly distinct from the initiative and referendum although in practice it is linked up with them in a trilogy commonly

[16] The total number of measures referred to the voters in one city at one time is not the true test of the initiative and referendum. A series of years must be studied, and care must be taken to distinguish between measures initiated by the voters or referred to them after the filing of a protest petition, and other measures which are referred to them by the state legislature, the city council, and the charter commission.

designated as the "I, R, and R." It applies to men and not to measures, and as a method of removal of officers it goes considerably beyond other methods both in theory and in practice.[17] Many city councils have the power to remove officials by impeachment, and also to expel one or more of their own members. In the hands of prosecuting attorneys and courts rests also, as a rule, the power to remove officials, but this power can be exercised only in cases of outright violations of law, *i. e.*, only where there is legal cause, such as nonfeasance or malfeasance. City councils, too, very rarely use their power of impeachment, and probably use it only in extreme cases. The popular recall, however, is designed to be used even in cases where the officer has simply got out of line with public opinion, and has taken official action to which citizens object. It is political in its nature. It aims to enable the voters to keep their officers constantly amenable to popular control, and "to aid the officeholder in retaining a candidate's state of mind." [18]

It is not difficult to understand the argument for the recall. Officers are usually elected for fixed terms of two, three, or four years. During this time they are supposed to carry out public opinion, but it is very easy for them to forget their preëlection promises. Once in office pressures are brought to bear upon them and inducements are given them to act against the general public welfare on behalf of special interests. Then, too, even though honest they may prove to be incompetent. In any one of these cases the council or the courts would hesitate or be powerless to remove an elected official. The voters themselves should then be able to bring about the removal. If they merely have the power of recall, the officials will be under constant warning to walk uprightly and to carry out their promises, and for this reason it is assumed that the recall power will not often have to be used.

The fundamental counter-arguments are also easy to perceive. Under constant fear of being recalled, public officers will become timid servers of the mob, veering this way and that with every gust of the winds of opinion. Able and upright men will refuse to run for office since they know that they will lack independence. Furthermore the people are not always good judges of the actions of public men. Many actions taken by public officials should be appraised not immedi-

[17] The so-called "recall of judicial decisions," which is not here considered, might better have been termed the protest or referendum on judicial decisions.

[18] H. S. Swan in Munro's *The Initiative, Referendum, and Recall*, p. 300.

ately in the excitement of the moment but only after a lapse of time. In the heat of a recall campaign charges will be made which it would be impossible to prove but which will, nevertheless, sway voters to oust the incumbent. The power of recall thus places in the hands of the "outs" and of all disgruntled elements an additional means of embarrassing the party in power and of hampering the government. It also imposes an extra burden upon the voters.

If we are correct in assuming, as we have, that in a representative democracy the function of the voters is to control their representatives in order to keep them in harmony with public opinion, then the latent power of recalling them at any time is an indispensable instrument in their hands. It is analogous to the power of the chief executive to remove his subordinates, and equally important. The argument that officers should be free from the threat of removal is equivalent to saying that the agent should be independent of his principal, or that the elected servant of the voters should be allowed to flout his promises and to govern as he pleases without even answering for his actions. This is, of course, strong language, and the opponent of the recall does not usually put the argument in just this way. Instead he urges that the man in office knows many things which the people do not and cannot know about the public business. They should have confidence in him, and should ask for an accounting only at the end of his regular term. Otherwise he will have to yield to every whim and fancy of the voters, and to do things which he knows to be contrary to the public good.

In this form the argument is not flattering either to the officer or to the public, and is based upon premises which are to some extent faulty with regard to both. It makes the officer appear to be so attached to his office that he would rather do wrong than to be recalled from it, and the voters to be flighty, inconstant, and incapable of understanding the public good. These premises it is hard to accept. As a matter of fact the voters even in cities are far from being as unstable and irrational as they are often made out to be. The very size of our cities and the variety of groups and interests of which they are composed tend in general toward stability. The people are essentially conservative and generally shrewd. They prefer to retain men already in office, and it is difficult to get them to sign recall petitions in sufficient numbers to bring about a recall election. This difficulty is enhanced by the high percentages required by the laws. If a clear majority of votes against the incumbent were required as a prerequisite to

his removal at any recall election, there would probably be very few removals except in cases of extreme provocation.

Every officer in a municipal democracy needs also to remember that it is one of his duties to explain his works to his people. It is one of the main purposes of democracy to let the people know. It is slow and tedious business, of course, but the officer must carry his public along with him, step by step, educating them as he goes. He must not get far ahead of them, he cannot be radical, and if they have the power of recall they are more likely to use it against one who suddenly changes a public policy than against one who follows the accepted path. However, where a recall movement is started against one who has honestly performed his duties in the public's interests as he sees them, he has little to fear from a recall election and something to gain, for the recall campaign gives him an additional opportunity to put his views and his reasons before the people.

If the power to recall officers should give the voters more confidence in their ability to control the government, it should also permit the lengthening of official terms. If government is to become more efficient than it has been at times in the past, officers must be given longer tenure. While there are still those who would go back to annual elections and one-year terms of office, those who have given a more careful study to the problems of democratic government favor an extension of terms. To this argument it might be objected that the recall is really a method of decreasing the length of official terms, not of lengthening them. There is, however, practically no evidence to support such a view. While the complete record of recall elections in American cities has yet to be gathered together and analyzed, enough is known to indicate that the recall power is a latent rather than an active one. It is a power infrequently exercised. Only a very small fraction of one per cent of the many officers elected from year to year in cities where the power of recall exists are ever removed by the recall. In many cities the voters appear to have made no use of the power at all.

From what we know, also, we can fairly say that in no case has there been any conspicuous case of gross injustice. While recall movements are frequently suggested, there is little evidence of improper intimidation of officers resulting from such suggestions, and there is substantially no evidence that men of ability and courage refuse to seek office to-day. It might be argued *a priori*, in fact, that men of faint heart would be most likely to be deterred from running by the possibility of being recalled.

REFERENCES

Brief general discussions of the initiative, referendum, and recall are presented in Munro, *Municipal Government and Administration*, Vol. I, Ch. XVII, and in Brooks, *Political Parties and Electoral Problems*, Chs. XVII and XVIII. More extended and specialized are the following: Oberholtzer, *The Referendum in America together with Some Chapters on the Initiative and the Recall*, new ed., New York, 1911, which goes into the history, the law, and the theory of these instrumentalities; Munro (ed.) *The Initiative, Referendum, and Recall*, New York, 1912, which contains a series of articles on the subject by various writers; Edith M. Phelps (ed.), *Selected Articles on the Initiative and Referendum* (Debaters' Handbook Series), White Plains, N. Y., 1914; Barnett, *The Operation of the Initiative, Referendum, and Recall in Oregon*, New York, 1915, the best intensive American study of the subject to date; Lowell, *Public Opinion and Popular Government*, New York, 1913, and Hall, *Popular Government*, New York, 1921, both of which present arguments against these devices; and Wilcox, *Government by all the People*, New York, 1912, which traverses all the important arguments but is generally favorable to the new powers of the people.

CHAPTER XII

HISTORY OF THE FORMS OF CITY GOVERNMENT

CITY GOVERNMENT IN THE AMERICAN COLONIES

Having existed previously as the Dutch city of New Amsterdam, New York was in 1665 recognized by proclamation of the English royal governor as a municipal corporation, "one Body, Politique and Corporate." Its first complete charter did not come to it, however, until twenty-one years later (1686). From that time until 1776 the number of more or less active chartered cities and boroughs in the thirteen colonies increased to eighteen.[1] We must picture these municipalities as small and scattered. Their activities and the forms of their governments did not greatly interest or concern the colonial authorities. They were not essential parts in the machinery of colonial administration, for their powers and functions as then construed were strictly local and largely "private."

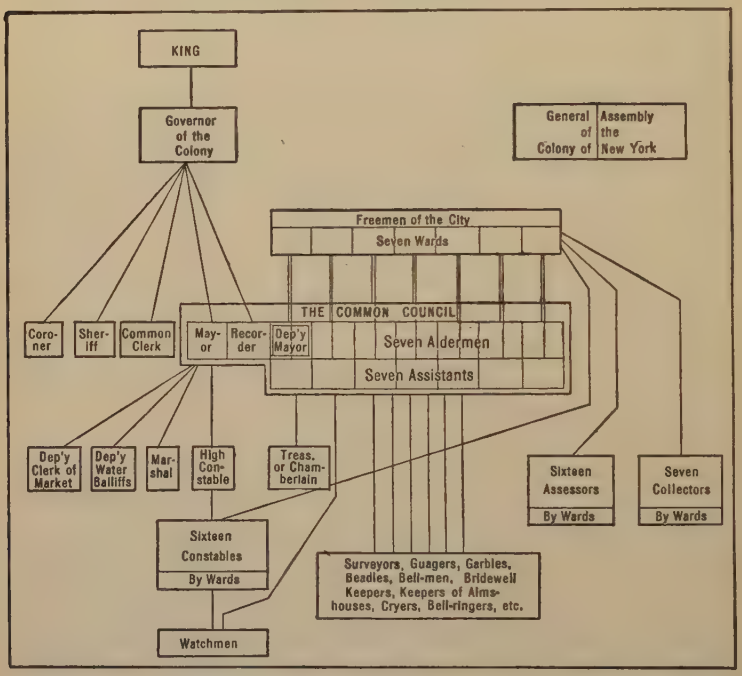
We have already seen that in colonial days the power of municipal government was vested in a more restricted group of voters than is the case to-day. Philadelphia, Annapolis, and Norfolk were "close corporations." In these places the officers originally named in the charter not only constituted the corporation, but also selected persons to fill vacancies when such occurred. There were no public elections for municipal officials. The corporations were irresponsible to the people. Elsewhere, however, there was a limited popular control. The freemen, or freemen and freeholders, chose annually a number of municipal representatives, including the aldermen and assistants or councilmen, and in some cases other officers. In New York after 1731 the voters in each ward had to choose annually an alderman, an assistant, a collector, one or more assessors, and one or more constables. In

[1] On the government of the colonial boroughs see especially Fairlie, *Essays in Municipal Administration*, Ch. IV; A. E. Peterson, *New York as an Eighteenth Century Municipality, Prior to 1731*, G. W. Edwards, *New York as an Eighteenth Century Municipality, 1731–1776;* Allison and Penrose, *Philadelphia, 1681–1887.*

Elizabethtown, N. J., the voters chose the town clerk. As a rule, however, the voters chose only aldermen and assistants.

As was customary in that earlier day, the powers of municipal government were vested in a fairly small and compact body of officers who of themselves constituted the corporation. Thus Governor Dongan in his charter of 1686 to New York did "declare, constitute, grant,

GOVERNMENTAL ORGANIZATION OF NEW YORK CITY UNDER THE MONTGOMERIE CHARTER (1731)



Recorder and Common Clerk given indefinite tenure; all others one year.
Deputy Mayor—An alderman designated by mayor, approved by governor.

and appoint, that the Mayor, Recorder, Aldermen, and Assistants, of the said city of New York, for the time being, . . . and their successors, forever hereafter, be, and shall be, by force of these presents, one body corporate and politic, in deed, fact, and name, by the name of, *The Mayor, Aldermen, and Commonalty of the city of* New York." [2]

In this group of mayor, recorder, aldermen, and assistants were vested substantially all of the powers of the corporation. There were

[2] See Kent, *The Charter of the City of New York*, 1836, p. 10.

other officers, however, and there were some minor powers vested in the mayor alone as well as some in other officials. If any one thinks that the colonial borough's government was a very simple contrivance, the accompanying chart of the organization of New York city under the Montgomerie charter (1731) should go far toward dispelling the idea. For all important purposes, however, there was group power and group responsibility. Under the Dongan charter the mayor, the recorder, at least three aldermen, and three assistants, or a majority of them, had to be present to make a quorum of the common council; under the Montgomerie charter this requirement was only slightly changed. They sat together, as one body, with the mayor, the recorder, or the deputy mayor presiding. All the other officers of the municipality whether elected by the voters or appointed by the governor of the colony, the mayor, or the common council itself, were supposed to obey its mandates. Disputes frequently arose, and there were appeals to the governor and to the courts, but in the long run the common council kept intact its powers and asserted its supremacy.

On its face the charter of the close corporation of Philadelphia illustrated this compactness of organization, this centralization of authority, far better than do those of either New York or Albany. The powers of that corporation were vested under the charter of 1691 and also under that of 1701 in the mayor, recorder, aldermen, and common councilmen, who constituted and acted as a single body called the "Mayor and Commonalty of the City of Philadelphia." Under the charter of 1701, which remained in effect for seventy-five years, there were eight aldermen and twelve common councilmen. These twenty with the recorder held office for life, but the mayor was elected annually by the other members. Other residents of the city could be appointed freemen, and could be compelled to serve in public offices under the corporation, but they had no right of participation in its affairs. The people were apparently under a "universal obligation to serve," but had no compensatory right to be consulted. The twenty-two who made up the local corporation were the entire government. The population of the city might rise as the tide about them and threaten the ultimate destruction of their power, but within the scope of their powers and while their authority endured, they apparently had a snug and compact organization for their purposes.

Unfortunately for the corporation, however, its powers were not always adequate to satisfy local wants. One power which the colonial cities either lacked entirely or had in too small a measure, was that of

local taxation, the reason being that the governors who conferred the charters probably had no authority to confer this power, while the provincial assemblies were slow and niggardly in granting it. The close corporation of Philadelphia, for example, was unable to procure the taxing power, and though it resorted to public subscriptions and other expedients, was never able to raise enough money to perform the most important functions. But while the assembly would not confer the taxing power upon the unpopular close corporation, it took a different attitude toward more democratic bodies. Thus in 1712 it provided for the popular election of six assessors within the city of Philadelphia, who, with the mayor and several members of the close corporation, were permitted to levy a small annual tax for the improvement of streets and other purposes. The assessors chose also the collectors and the treasurer, but the corporation directed the making of disbursements. We have in this instance not only an early movement to make the city government of Philadelphia more democratic, but also the beginning of the diffusion of responsibility. A separate and rival "board" has been set up to divide the local powers with the corporation.

Naturally it was hard to get these two bodies to coöperate, so that much friction and delay resulted. Nevertheless, in 1750, another elective board was created in the form of a board of wardens to have control of "the nightly watch" and to assist the board of assessors in levying taxes for this purpose; and in 1762 still another board of commissioners was created, to be elected by the freemen and to have partial control over the improvement and cleansing of streets, and to coöperate with the assessors in taxation.

It would appear from what we know now that theories of the separation of local powers had not yet come in to trouble the little cities of the colonies. Some officers might be elected and some appointed. One might claim a right to certain fees and another assert that a particular function had been granted by the charter to him and not to the council. But taking the charters as they stood and the records as we have them, we find no evidence of any insistence upon the separation of legislative, executive, and judicial powers in the colonial municipal governments. There was an extensive separation of functions, for different officers were required to do different things; but there was no endeavor to classify the functions into legislative, executive, and judicial; all classes of duties were vested more or less indiscriminately in the mayor, aldermen, and assistants; and all functionaries under the charters

responded more or less directly and completely to the control of the common council, though such boards as existed in Philadelphia constituted, of course, an exception to this statement.

Standing nominally at the head of the municipality was the *mayor or chief burgess*. His term was everywhere one year. His appointment came from the provincial governor or from the corporation, except in a few small boroughs where, as Fairlie tells us, the so-called "chief burgess" was elected by vote of the freemen.[3] The mayor presided over the common council and participated in its work, but had no veto power and in at least one city did not even vote. Neither was any general executive power inherent in his office. Certain special functions such as licensing tavern keepers, inn keepers, "and all public sellers of wine, strong waters, cider, beer, or any other sort of liquors by retail," and serving as clerk of the market, were expressly attached to his office in such a way as to make some of the mayors assert their title to the fees obtained. In New York the mayor had, also, the power of appointing the high constable, to which the Montgomerie charter added the power to appoint the marshal, a deputy clerk of the market, and deputy water bailiffs.

And if the mayor had both some legislative and some executive powers, as we use the terms to-day, he also had some very important judicial authority. He and the recorder and the aldermen were justices of the peace, and held jointly the local judicial courts, both civil and criminal. Before them could be brought numerous petty civil actions. They were empowered, also, to punish offenders against the laws of the province, except in cases of felonies such as treason and murder, as well as against the ordinances of the city. As justices of the peace they could commit to jail, for trial by the provincial courts, all persons accused of serious crimes. Indeed their judicial powers extended to all the needs of the local community. Most interesting to us, however, is it to note the complete fusion of legislative, executive, and judicial powers in the same persons. The mayor of New York could act with the common council to enact market ordinances or by-laws for sanitation and quarantine along the water-front; as clerk of the market or water-bailiff he might arrest or cause the arrest of those who violated the regulation; and as a justice of the peace he might preside over the court which meted out penalties to the offenders. Such was the complete fusion of functions in an early American city.

[3] These so-called boroughs headed by chief burgesses were not true chartered municipalities. See Fairlie, *Essays in Municipal Administration*, Ch. IV.

Another officer appointed either by the governor or by the corporation itself was the *recorder*. His tenure of office was usually indefinite. He sat as a member of the common council, and in New York under the Montgomerie charter he might even preside in the absence of the mayor. He was also a member of the local court which in some cases came to be called "the recorder's court." In addition he was considered the chief law officer of the city, a city attorney or corporation counsel. There was also a "*town clerk*" or "common clerk," after the manner of English boroughs, who kept records both of the common council's proceedings and of those of the city court. His appointment was made by the governor or the corporation itself and was indefinite in point of time. One William Sharpas who as town clerk "with great integrity" and efficiency kept the records of the city of New York from 1692 until his death in 1739 has made all students of local government his debtors.

There were other officers, too, more than we need here to mention. We refer the reader again, for illustrations, to the chart of the New York city government under the Montgomerie charter. That city, being in some respects a county as well, had its *coroner* and its *sheriff*. There were, also, a *high constable* and a *marshal* appointed by the mayor, sixteen *constables* elected by wards, and the ever changing group of citizens who served as *watchmen* under the constables by appointment of the common council. Could anyone imagine a more confusing organization of the police system? There were financial officers, also, such as the *chamberlain*, the *assessors*, and the *collectors*, not to mention a veritable host of minor officials, *surveyors*, *inspectors*, *beadles*, *bell-men*, and what not, who performed the numerous small services demanded by custom and tradition in the eighteenth-century town.

But we must give a little more attention to the common council, the center of the governmental system. Besides the mayor and the recorder the council included two classes of members, the *aldermen*, and the *councilmen or assistants*. The title of alderman was one of more dignity than either councilman or assistant, and no doubt the aldermen were usually older, more experienced, and more substantial men. Then, too, they had some judicial functions not enjoyed by the other class of council members. In other respects, however, there were few differences between the two classes of members. Both held office, as a rule, for terms of only one year. Both were elected by the freemen or by the close corporation, and in New York and Albany the elections

were by wards. Neither aldermen nor councilmen received salaries, and when they met together, as they always did, as one body, the vote of an alderman was no better than that of a councilman.

Even when all the members were in attendance, the average colonial city council was not an unwieldy body. Philadelphia, after 1701, had twelve councilmen, eight aldermen, the mayor, and the recorder. New York had seven aldermen and seven assistants, from 1731 on, besides the mayor and recorder, while Albany made shift with six of each of the two classes of members. These bodies of twenty-two, sixteen, and fourteen members, respectively, were normal-sized city councils for the time.

This explanation of the governmental organization of the colonial boroughs will no doubt seem confusing to the reader. In the arrangements described there appears to be no single guiding principle. We have been taught to think of our modern city governments as somehow vastly different from those existing in earlier days, and so in truth they are in many respects. Yet there is much truth in Ecclesiastes' saying that "there is no new thing under the sun." If we are troubled in American cities to-day by the long ballot, and the excessive use of the principle of popular election, by the diffusion of power among various boards and the difficulties of municipal finance, let us not at least jump to the conclusion that these problems are original with us. Even in colonial days city governments were not simple but complex.

Due allowance being made for numerous exceptions, the characteristics of city government in the colonial period may be summarized briefly as follows:

1. The charters came from the governors or proprietors, not from the provincial legislatures. However, the legislatures had the power of changing the local organization to some extent, and of extending the powers of local officials, as in the field of taxation.

2. The charters followed old or contemporary English forms, giving the cities numerous corporate privileges but not stressing their duties as agents of the central government.

3. The popular basis of the government was not as broad as to-day. Three places were governed by close corporations, whereas in other places only freemen, or freemen and freeholders, could vote.

4. Except in the close corporations the voters chose the aldermen and councilmen, and might also choose constables, assessors, and collectors, but they did not elect the mayor, who was usually appointed by the governor.

5. Practically all of the powers of each corporation were vested in one body consisting of the mayor, recorder, aldermen, and councilmen. This body was both legislative and executive, and all its members except the councilmen had judicial functions as well.

6. Elective officers usually held office for one year, but there were cases of longer terms, even of life terms. Some officials appointed by the governor held office during his pleasure.

7. Some officers were paid by fees, but official salaries were exceptional. Instead of having full time paid civil employees, the cities used unpaid, untrained citizens who were obliged on pain of fines to serve as officers, watchmen, firemen, and street workers, one or more days each year.

THE CAUSES OF MUNICIPAL REORGANIZATION

We have already remarked that the American people have made great innovations from time to time in the organization of their city governments. Indeed it is not too much to say that as a people we have made more experiments in this field in the past century than all the leading countries of Europe combined. Much of our experimenting has resulted in failure or disappointment, but our whole experience has been so rich that we are now far better equipped to solve this problem than are many of the countries which have made fewer ventures in this field.[4] The question which we wish now to consider is this: Why should Americans have indulged so extensively in experimentation in this field?

Perhaps chief among the numerous causes of change is the mechanical bent of the American mind. Under the frontier conditions of the west, from colonial days to the present, men were forced to be inventors. Because labor has always been expensive in this country, manufacturers and others have been compelled to devise machinery to do the work of laborers. There are factories equipped with machines which are practically automatic, and with the coming of electricity and the automobile and the radio, our mechanical proclivities have

[4] There is, unfortunately, no monograph on the history of municipal government in the United States since the Revolution. Attention may be called, however, to the works of Professors Fairlie, Munro, and McBain, cited in the references at the end of Ch. XIII, and also to the work of Mr. Chang there cited. The chief sources for such a history would be, obviously, city charters and state laws, official records, proceedings, and publications of local governments, newspapers and local histories, judicial decisions, and miscellaneous articles, pamphlets, etc.

been considerably increased. With little inclination for difficult abstract thought, we give much attention to practical mechanical things.

At the same time, it must be admitted, Americans as a whole have had little time to devote to the problems of government, and little patience with them. What we all seek, hopefully to the last, and even when we feel sure that the quest is vain, is some *form* of government which will operate automatically, like a piece of machinery, with a minimum of attention from ourselves. Books have been written by enterprising spirits advocating this and that plan of government as automatic.

Now it is not surprising that the mode of thought which we apply in one field should be used by us in other fields. Very few of us have minds so flexible as to enable us to think in one way on one subject and in an entirely different way on others. Few of us fully realize the essential difference between the inanimate steel and wood and rubber used in making an automobile, and the living sensitive tissues of man and of the society in which he lives.

President Wilson has made a suggestive attempt to show how it was that the American people came to think so mechanically of government.[5] According to his explanation the dominant scientific concept at the time of the formation of the federal constitution was the Newtonian theory of gravity controlling the relations of the planets in the universe. Here were different celestial bodies of fixed mass, occupying different positions in space, revolving about each other in fixed orbits, and holding always the same relationships to each other. There was something mechanical and unchangeable about the whole scheme. It was precisely this sort of thought which controlled men's minds when they came to construct a new federal constitution. There were to be three departments balancing or checking each other in a determinate and permanent relationship to each other. Notwithstanding that this wholly mechanical theory of government did not fit the facts of life because it almost wholly ignored the ideas of change and growth in institutions, nevertheless it came to be applied generally to the organization of governments by the American people. We have constructed and reconstructed governments, both state and municipal, as the shopkeeper rebuilds his store and moves his shelves about, always seeking the most efficient plan. While this method of approach has some real value, the danger is that it will be overdone.

[5] *Constitutional Government in the United States*, Ch. III.

A second important reason for the great amount of experimentation with forms of city government in America is to be found in the large number of legislatures which participated in the work and in their lack of common standards and traditions. Up to the time of the Civil War there was in America practically no study of or writing upon the subject of municipal government. There was no common theory, no common body of knowledge, to guide legislators. There were only local traditions, experiences, and prejudices. Since the problem was not a very pressing one in early years, no single legislature took the time to make a thorough investigation of the subject. Indeed it can be said that down to the present day no American state legislature has made anything like a complete investigation of the state's municipal institutions. Legislative action upon this important matter has usually been fitful, unmethodical, and without plan. When a state legislature has acted, it is almost impossible to say why it has acted as it has, and few official records even attempt to give the reasons for what is done. Generally speaking the representatives from any city have been able to have charter amendments enacted for their city so long as they have not injuriously affected other cities. In some cases the legislature has interfered directly in municipal affairs but without much conscious effort to bring about uniformity except where the constitution required it. Thus it has come about that, not only has every state had different municipal legislation from every other, due allowance being made for all the copying and imitation there has been, but also in most states one city has been allowed to differ from another in the form of its municipal organization about as much as it has pleased. While the legislature has kept a firm control over the powers which cities may exercise, it has generally done very little to prevent local experimentation in the forms of municipal organization.

Now there is no one who has ever gone through all the charters and laws governing municipal organization from colonial days to the present. The task would be a long and tedious one and might not prove very fruitful; and even if we could get at all the laws and charters, how could we know that these had been actually enforced? There would have to be frequent reference to local newspapers and to the minutes of local authorities, and probably no one would be in a position to get all these materials together. In the present state of our knowledge, therefore, the reliable information available is very limited, a casual sample here and there, and for this reason we must be slow to generalize. We may speak of beginnings, perhaps, and of general tendencies,

but must always remember that there are exceptions to almost everything we say. Particularly we must be wary of attempting to dogmatize upon the reasons why certain changes were made. A simple explanation of social or political occurrences is usually wrong. A "good" reason why a change should be made is not always the "real" reason why it is made.

It is not enough to know that American legislatures and cities themselves have made frequent alterations in the forms of city government. We need also to understand the causes which have led them to make changes and something of the nature of the changes introduced. It is not enough to know that various groups of city-dwellers have at times become dissatisfied with their local institutions. We must know in addition some of the underlying causes of their dissatisfaction as well as something of their thought concerning possible cures for unsatisfactory conditions.

The tremendous growth of cities in the nineteenth century is naturally the first factor to which we need to pay attention. Many a city has doubled its size in a single decade. New York increased from 152,056 population in 1820 to 5,620,048 in 1920. Chicago was not separately reported in 1830; in 1840 it had 4,470 inhabitants; and in 1920 it numbered 2,701,705 people. With the increase in size of cities came also an increase in the importance of their affairs, an increase in wealth and taxable values, and an increase in the value of street franchises, public contracts, and other public privileges. New pressures came to be exerted upon the local governments. State legislatures became jealous of the power of city councils, and were ready in many cases to take powers out of council control and to turn them over to new boards or officers, frequently appointed by the state authorities themselves.

Along with the growth of cities, and particularly after the Civil War, there came the remarkable increase in municipal functions which imposed new burdens upon the local administration, and resulted often in the creation of new boards for the handling of functions which, it was alleged, could not be intrusted to existing city councils and departments.

It so happened that the great growth of cities in size, in power, and in wealth, was timed to accompany the extension of political power to large masses of people. The agitation against specially privileged classes began in America many years before the Revolution, but in the years during and following that struggle it went forward with renewed

energy. Some of the colonies were ruled for long periods by small groups of old and wealthy families, and even after the Revolution an untitled gentry continued to be the ruling class in several of the states. The cities, too, experienced this sort of government at times. How many of the older cities have not lived through the struggle between the well-to-do, property-owning old settlers on the one hand, and the incoming unpropertied masses on the other!

When in the early decades of the nineteenth century the suffrage came to be extended to all male white citizens, the doom of aristocratic government in American cities was sealed. True it is that for some years tradition and habitual reverence on the part of the laboring class kept many of the older and more prosperous inhabitants in office, but the seats of power had been irrevocably changed. The legal right to rule states and cities had been transferred from the few to the many, and in cities the many included large numbers of unpropertied and poorly educated persons, thousands who were but transients, and whole settlements of persons who had been born abroad and still spoke the language of the motherland. It was, moreover, these newly enfranchised groups who came to take the keenest interest in the practical benefits of local government, who sought posts in municipal office, and who came to dominate municipal affairs. It was the coming into official power of this class which made so many persons tremble for the future of democracy in America. To them it seemed that the temples were being shaken to their very foundations.

The extension of the suffrage to these new classes was in part the effect and in part the cause of an "irresistible movement" for democracy. Everywhere in the American territory, but perhaps more in the west than in the east, men became imbued with a philosophy of democracy which, if it had no solid scientific background, nevertheless became a tremendous political force in the decades before the Civil War. The theory was, in short, that every white man is the equal of every other, and fully capable of exercising all the political duties of citizenship; that every man should have an equal right to vote and to hold office; that the voters are capable of selecting all important local officers themselves; that popular election at frequent intervals is the only sure means of keeping officers responsible to the people; and that, in order to make it possible for poor men as well as rich to serve the public, public officers must all be paid. President Jackson himself argued that "the duties of all public officers are, at or least admit of being made, so plain and simple that men of intelligence may readily

qualify themselves for their performance; and I cannot but believe that more is lost by long continuance of men in office than is generally to be gained by their experience." [6] This general school of democratic thought held to principles which are, in fact, in many respects just the reverse of the principles of modern political reformers. They justified the long ballot, the spoils system, short official terms, and rotation and inexpertness in office.

Still another principle of early nineteenth-century democracy appears to have been that of decentralization. This did not mean merely local self-government, but that even locally it was unsafe to intrust all powers to the hands of one body. First there must be the separation of powers between legislative, executive, and judicial departments, more or less in imitation of the state and federal governments. This was considered a sound American doctrine. Secondly, special functions of importance had better be conferred upon special boards and officers responsible directly to the voters. Schools, for example, required the attention of a special board, and so at different times and in different places did libraries, and parks, and public works, and police and fire departments, and public utilities. One reason for such decentralization was undoubtedly the fact that the early unpaid mayors and councils could not afford the time needed to handle properly all of these functions.

Not least in importance of the factors influencing the form of American city government in the nineteenth century was the nation-wide spread of the peculiarly American party system coupled with the spoils system. In the average American city the typical party was not a large body of persons organized for the purpose of putting into effect a code of common principles. It was, instead, a much smaller group of men organized for the purpose of gaining the public offices, the patronage, and the spoils. Politics was not so much the part-time activity of the many as the full-time and exclusive labor of the few who made their living by political work. To them the spoils system was indispensable to existence. Into their hands, and especially into the hands of the inner ring or of the boss, the great growth of cities and the expansion of municipal functions put unexampled opportunities for self-enrichment. The control of these spoils was the principal object of party struggles. If one party controlled the state legislature while another controlled the city government, is it surprising that the

[6] First message to Congress, 1829. See also Merriam, *A History of American Political Theories*, Ch. V. Of course when government performs as few functions as it did in Jackson's day there is something to be said for the Jacksonian theorem.

legislature should find pretexts for reorganizing the city government in order to restrict the rival party's access to the spoils or to hamper it in the conduct of the local government? Or if one party controlled both state and city, is it cause for wonder that the legislature should pass laws so reorganizing the city government as to give the party machine complete control over the city?[7] Many acts of legislative reorganization of cities can be explained in no other way than as the attempts of a party to increase its own power or to weaken its opponent. Local dissatisfaction was often nothing more than a pretext for the commission of the deed. Such local dissatisfaction always exists in some degree.

In addition to the changes which had to be made on account of the growth of cities and the increase of their public activities, or which arose out of current democratic dogmas or the demands of party politics, there were undoubtedly many changes made for other reasons. From the fertile brains of legislators, local officials, and private citizens there must have come many suggestions for the improvement of local institutions. If a change were once made in an important place, other cities would be almost sure to imitate it, and thus an innovation might spread far in a short time. Not only did one city emulate and imitate another and larger city, but cities also imitated the state governments, particularly in such matters as the separation of powers.

It is difficult to find any solid reasons why there should have been so much imitation by one city of the institutions of another. One is inclined at times to think that the mere desire for change must have been a very powerful motive, and that imitation of accessible models took the place of hard research and thought. There is little evidence to show that any important studies of municipal government were made in the United States in the entire period before the Civil War. There were no important writings on the subject, no national clearing houses of municipal information. Indeed it was not until the '80s or '90s of the last century that there came to be anything like a widespread discussion of municipal problems, and even to-day the science of municipal government is far from being fully developed.

CHANGES IN MUNICIPAL ORGANIZATION, 1783–1900

Several writers have traced the development of American municipal institutions chronologically or by periods from the Revolution

[7] The "Tweed Charter" of 1870 for New York is a well-known example. Myers, *History of Tammany Hall*, pp. 222–30.

down to recent times.[8] Because of the difficulties inherent in this method, however, we shall follow here a topical method, dealing with one after another of the important organs of municipal authority, and tracing its development from colonial days down to about 1900.

The voters as an organ of government. The nature, extent, and effectiveness of popular control over the government is a basic question in any democracy. Prior to 1900 the tendency in America was to broaden the basis of the government by extending the suffrage first to include all male whites, and later to attempt to include all male negroes as well. This movement was accompanied by the inclusion also of a great many foreign-born persons either with or without naturalization. No such broadening of the base of any democracy can take place without affecting in fundamental ways the whole structure of the government.

But these voters were not given the right merely to elect local officers. More than in most other countries they were given the right to participate in the guiding of local legislation. In some early municipalities in America the annual town meeting was retained along with the establishment of other municipal authorities. This practice whereby the voters are consulted directly on problems of finance and legislation, survives in some places to this day. But even when the town meeting became impractical, the practice grew up of submitting certain major measures, such as the adoption and amendment of charters, the enactment of local prohibition under "local option" laws, and the approval of bond issues and street franchises, to referenda in the municipalities concerned.

The council. In colonial days the city council included the mayor, recorder, aldermen, and councilmen. Despite its diversity of membership it was a single, small body which exercised as one body substantially all the important powers of the corporation, both legislative and administrative. Even in colonial days, however, attacks had been made upon its supremacy, and thereafter came still more onslaughts. At the same time that its powers were being attacked its organization was also being altered. In 1788, Professor McBain reports, the city council of Norfolk, Virginia, was divided into two chambers, thus conforming in its organization to the Virginia legislature as well as to the Congress of the United States under the constitution then before the

[8] Fairlie, *Municipal Administration*, Ch. V; Munro, *Municipal Government and Administration*, I, Ch. V.

states.[9] One by one other cities followed suit, but apparently the two-chambered council never became the dominant type. The division of the council into two houses was accompanied in some places by a radical increase in its size. This was quite in conformity with the democratic doctrines of the day and seemed to be required by the increased size of city populations. City councils came in some large places to have over a hundred members, and even in small cities it was common to find councils of thirty or more members. Naturally the voters could not elect so many members at large. Hence, though New York and Albany alone seem to have had the ward system in colonial days, at a later date many cities came to have this method of election, one argument for which was that it put the government closer to the people.

Could a survey now be made of the American city governments existing in the 1870s, one would probably find the city councils large, elected by wards, and in many cases divided into two bodies. Soon after this, however, a reaction began to take place. The bicameral principle and ward elections began to fall into disrepute. By the 1890s, at the latest, a movement had begun to return to the single-chambered council and to reintroduce election at large. The initiation of these changes brought with them, of necessity, a reduction in the size of city councils. Along with these changes in organization the council underwent various modifications in its powers, which can best be understood after a discussion of the position of the mayor and various other officers and boards.

The mayor. In its inception in this country, the office of mayor was a copy of the office as it then existed in England. The mayor held office by appointment for one year. He presided over and acted as a member of the common council, but had very few special powers of any consequence. Though nominally the head of the city government, he had except for his judicial functions no important powers apart from the council with which he sat. The charter did not designate him as the "chief executive" of the municipality, and in fact his rôle was fully as much legislative as executive.

Four colonial city councils (three of them in close corporations) had the power to elect the local mayor. In the other colonial cities the governor made the appointment. Although the Revolution brought about important changes in the position of governors, nevertheless a

[9] The "Evolution of Types of City Government in the United States," in *National Municipal Review*, 1917, Vol. VI, 19–30.

few mayors continued for some years to receive their positions from the hands of the governor. Elsewhere the mayor became elective by the council, except for a few small places in which, from fairly early times, he had been elected by popular vote. The first charter of New Haven in 1784 provided that the mayor should be elected by the voters, but till 1826 permitted a mayor once elected to remain in office during the pleasure of the general assembly of the state, and during this period of forty-two years New Haven had only four mayors, two of whom died in office.[10] The Nashville charter of 1806 also provided for an elective mayor, as did the charters of Boston and St. Louis sixteen years later.[11] Thereafter the idea spread more rapidly and soon became the dominant one, though it never completely ousted the older plan of election by the council.

In the popular election of the mayor we witness the emergence of the mayor as a separate and important authority in the city government. In colonial days he had been a member and president of the council, and this he has continued to be down to the present in many small cities and a few large ones. Indeed, even popular election did not make him a separate force at once. In New Haven under the charter of 1784 he presided over an old-fashioned council; in Boston under the charter of 1822 he presided over the aldermen while the common council met separately. In Baltimore under the charter of 1796, on the other hand, as well as in Philadelphia under an amendment of the same year, the mayors were not elected directly by popular vote, yet they were in both cases separated from the council. The principle to keep in mind is that in early days charter developments came slowly and by piecemeal. The separation of the mayor from the council did finally become a very common practice, but it was not until the eve of the Civil War that this development took place in any considerable number of cities.

To become truly independent and powerful in city affairs the mayor needed much more than a popular mandate and a separate position. Separating him from the council did not necessarily strengthen him at all. He needed definite powers, and these the legislature was slow to confer upon him. Fear of "one man power" was an American heritage from colonial times which was slow in dying. America's trust was in her representative bodies. Nevertheless as early as 1796 certain citizens of Philadelphia sent their "prayer" to the

[10] Levermore, *The Republic of New Haven*, pp. 449–52, 502–03.

[11] McBain, in *National Municipal Review*, Vol. VI, p. 21.

state legislature "to render the charter more conformable to the frame of government of this Commonwealth," [12] and no doubt there were others who looked upon the federal constitution as providing the proper model. The veto power, for example, was already possessed by the president and several governors. In 1796 the same power was conferred upon the mayor of Baltimore, with the proviso that by a three-fourths vote the council members might override it. Furthermore, he was to receive a salary, as also did the mayor of Boston after 1822. Earlier mayors had received fees and certain special emoluments, but the establishment of regular salaries was important, not only in opening the office to poorer men, but also in contributing to make it more independent and outstanding.

But still something was needed before the mayor could become anything more than an important "influence" in municipal affairs,—and influence is not authority. To become truly powerful the mayor needed also the right to appoint and to remove the important city officers. He needed, in other words, to become the actual head of a separate executive department, since he could not hope to oust the council from its legislative functions. This power was the last of all to be added to his office, for city councils fought desperately and in many places successfully to prevent the transfer. We have seen that in New York even in colonial days the mayor had some appointing power. Although the Baltimore charter of 1796 also conferred some of this authority upon the mayor, yet it is safe to say that down to the Civil War the idea of giving the mayor appointing powers comparable to those of the president had been put into practice in very few places. A premature and short-lived experiment along this line was made in the St. Louis charter of 1838, and in 1857 the mayor of New York was given the power to appoint the important department heads with the approval of the aldermen.

Previous to tne Civil War, therefore, the average American mayor did not become the head of a separate and powerful administrative department of the city government. However, his position was slowly changing. He was in some charters charged with the duty of seeing to it that the laws were enforced and in some places he was permitted to head the police department. Elsewhere he was even denominated "chief executive"; and while calling him chief executive did not make him that, still we can see that in the popular mind his position was considered to be analogous to that of the president. After the Civil

[12] Allison and Penrose, *Philadelphia, 1681–1887*, p. 63.

War the time was ripe for a more rapid increase of his powers. In 1870 the notorious "Tweed Charter" of New York authorized the mayor to appoint the principal department heads without aldermanic confirmation. This provision was premature, and when the audacity and the corruption involved in its passage were revealed, along with other exposures concerning the Tweed ring, the charter was replaced by another which restored the power of the aldermen to pass upon the mayor's nominees. The idea that the mayor might be made the sole responsible head of the administration had been evolved, however, and it was not destined to be forgotten. At a later date such cities as Boston, Brooklyn, and New York took the plan over into their charters, and many others have it to this day. This power in the hands of the mayor, be it noted, is not founded upon any "federal analogy." The president's appointments are subject to confirmation by the Senate. When this complete power of mayoral appointment is coupled with the power recently given to some mayors to draft and to control the passage of the municipal budget, we see the office of mayor raised to dizzy heights, indeed.

Independent officers and boards. In the slow rise of the office of mayor which we have just reviewed a number of the council's most important powers were in many places taken away. It ceased to be solely responsible for the entire local government. But at first it was not primarily the mayor who gained authority at the council's expense. Before the mayor became the important officer that he was in so many places at the end of the nineteenth century, American cities had tried another experiment in municipal organization. Complete centralization of administrative power in the hands of the mayor was preceded in most cities by an extensive decentralization of the municipal administration. This episode in the development of the municipal constitution is deserving of special attention.

It will be recalled that the voters of New York, even before the Revolution, elected not only aldermen and councilmen but also constables, assessors, and collectors in each ward. In Philadelphia at the same time there were several elective boards which exercised functions separate from those of the corporation. Here were some early examples of municipal decentralization which were destined to be widely imitated in the next century. With the spread of manhood suffrage and the development of the idea that only "the sovereign American citizen" himself was fully capable of choosing directly and holding responsible his numerous official servants, the principle of popular

election was extended to many offices, and the number of elective state, county, and municipal officers was greatly increased. Thus although the council was deprived of much of its appointing power, the mayor, on the other hand, did not immediately gain what the council lost. As the governor of the state, so the mayor of the city learned that he was not in reality the head of his administration. In many places there stood alongside of him a treasurer and a comptroller, and perhaps a city attorney and a street commissioner and other officers, each of whom not only had an equal mandate from the voters but also had his own powers, expressly conferred upon him by the charter. The result was to make these many officers practically independent, and to establish a decentralized administration over which neither mayor nor council had complete control.

In the same years both before and after the Civil War the council lost much of its power in another way. The spread of manhood suffrage, the influx of the foreign born, the rise of party machines, the spoils system, and the ward system of election, and the tremendous temptations to graft in rapidly growing cities, coupled with the indifference of the public, had undoubtedly combined to reduce the efficiency and honesty of many city councils. This was, at least, the opinion of many, and it gave legislatures a pretext for not increasing, and sometimes for actually reducing, the council's powers. Almost everywhere the educational function was conferred upon a separate board which had its own financial powers. The administration of public works, the management of waterworks, the control of police and fire departments, was frequently conferred upon semi-independent boards. Sometimes the state legislature itself, or the governor, appointed these boards without regard to local wishes. As new functions arose, such as the establishment and care of parks and libraries, it was common practice to confer these also upon separate boards. The net result was that a new form of municipal government was developed, a form which has continued in many places to this day. It was neither council government, nor mayor government, nor a combination of these. It is more accurately describable as council-mayor-board-officer government, decentralized both on the side of policy making and on the side of administration.

Reconcentration of powers. As the nineteenth century drew to a close a strong reaction developed against the decentralization which has just been described. It was clearly seen, on the one hand, that the voters could not intelligently elect, and much less control, the numer-

ous officers and board members whose choice fell to them; and on the other hand, that the lack of harmony, the irresponsibility, and the high overhead expense resulting from so much decentralization was clearly harmful to the administration as well as to the city.

Then began a new movement for consolidation and concentration of power. Legislators were not ready to restore council control. Instead the tendency was to confer more power upon the mayor, with the aim of making him the responsible executive head of the city administration. At the same time, with the abolition of certain boards, the legislative power of the council was considerably broadened. Then for the first time city governments seem actually to have been molded in the pattern of the American national government; but even this was a passing phase. The division of the council into two bodies fell into general disfavor. So also did the practice of having the council or one chamber thereof approve the mayor's appointments. The resultant form of government was one in which a single chambered council exercised only legislative and financial powers and had no direct control over administrative officers, while an elective mayor appointed and removed all important department heads and through them controlled the administration of the city.

This "federal," independent-executive, or strong-mayor type of government was in great favor after 1890 and continues to be the accepted plan in many large American cities to-day. It will be more fully analyzed hereafter. Here we need pause only long enough to remark how far we have come since colonial days in the development of municipal institutions. At that time no one seems to have thought of the desirability of differentiating legislative from executive powers in the municipal constitution. The common council exercised substantially all of the corporate authority of every kind. To-day the terms "legislative" and "executive" have become common coin in the exchange of ideas upon this subject, and many a citizen feels that the foundations of government rest upon the principle of a complete separation of legislation from execution or administration.

Rise of separate municipal courts. The gradual separation of legislative from executive powers in American cities in the nineteenth century was accompanied also by the separation of the judicial power from both. The influences which brought about this change were much the same as those which controlled our general municipal development. In colonial days the mayor, recorder, and aldermen, all of whom were members of the common council, were usually justices of the peace and

members of the local judicial tribunals. They were generally without training in the law, however, and as the cities grew and the cases became more difficult to handle, a demand arose here and there for a separate set of officers to act as judges. Men trained in the law and not burdened with other duties were needed, but at the same time there was a demand that they be directly elected by the voters.

By degrees the necessary changes were brought about. In many cities the mayor and aldermen lost their judicial functions even before the Civil War, though elsewhere the change did not occur until later. Very frequently there was an intermediate stage in which there were special elective or appointive judges, while the mayor and aldermen continued to exercise certain judicial powers. Although even to this day the separation has not everywhere been made complete, still a mayor's court or an alderman's court must to-day be considered as archaic, except in small communities.

The abolition of the judicial powers of mayor and aldermen has generally meant the end of municipal control over judicial matters. The separate judicial officers who have been created here and there in cities under the titles of justice of the peace, city magistrate, police judge, municipal judge, and what not, have generally come to be a part of the state judicial system. Thus one of the most important results of the nineteenth-century development of city government has been to leave the city government proper endowed with legislative and administrative powers only, while its former judicial functions have been transferred to courts not under its control.

DEVELOPMENT OF MUNICIPAL ORGANIZATION SINCE 1900

The commission plan of city government. The beginning of the present century saw the municipal governments of the United States developing slowly and normally in the direction of the independent executive type. While there was some opposition to this movement, it had on the whole the support of state legislatures as well as that of the principal national municipal reform association.[13] While this plan went far toward centralizing responsibility for municipal administration, it of course continued and made sharper than ever the separation of executive and legislative powers. The next forward step was to abolish this separation.

[13] National Municipal League, *A Municipal Program*, 1900, pp. 74–87, 201–04.

In the black years of reconstruction following the Civil War it was not uncommon for cities in the South to find themselves in serious financial difficulties. At such times it was not unusual for state legislatures to interfere in their affairs by setting up small boards of commissioners to exercise temporarily all the powers of municipal government. There were other precedents, too, for the commission type of city government, notably in Washington, D. C., after 1874, but as a general rule such organizations were only temporary and transitional.[14] They were set up in order to place a city upon its feet again with a view to restoring the government later to its previous form.

On September 8, 1900, a storm and tidal wave swept away thousands of lives and a great deal of property in the city of Galveston, Texas. In the days which followed, popular confidence in the local municipal authorities, previously much weakened, was almost entirely destroyed. The city was in ruins, the corporation was nearly bankrupt, and the officers were unable to bring even the semblance of order out of chaos. In this emergency a local association of business men appointed a committee to draft a new charter for the city. The work was soon done, the measure was presented to the state legislature, and that body enacted the new charter as law on April 19, 1901.[15] A year after the disaster the new city commission took over the entire local government. The tragic background of this movement for municipal reform gave a dramatic setting to all that the new commission did. What might otherwise have been considered a mere local aberration, a sport among municipal institutions, became a matter of general public concern.

The charter framers had recommended the establishment of a board consisting of five commissioners to be appointed by the governor. This proposal was modified, however, so as to make three appointive by the governor and two elective by the city. Subsequently all five became elective. In this small body were vested all the powers of the municipality. One, designated as mayor, exercised a general supervisory power. Each of the other four had general control over one of the major departments of the city's work. The five together exercised

[14] The New York *Times* of May 21, 1924, reports the dissolution of the Dublin city council by the Irish Free State government, and the appointment of "three commissioners to perform the council's duties." No doubt other examples of this sort of action could be found.

[15] Chang, *History and Analysis of the Commission and City Manager Plans of Municipal Government in the United States*, pp. 55–6.

all legislative power, financial power, and the most important powers of appointment. Salaries were provided, but these were not sufficient to make it possible for a commissioner to give up his private business. It was not intended that the commissioners themselves should administer in person the work of their respective departments.

Besides entirely ignoring the separation of powers, the Galveston plan greatly simplified and centralized the local government. It introduced the short ballot and made the government visible to all.

So great was the improvement in the city's finances and services under the new plan that other cities began to take notice of what was being done. In 1905 Houston was given a charter similar to that of Galveston, and at later dates other cities in Texas and throughout the South have been reorganized under the commission plan.

In the meantime a partly independent movement for something in the nature of commission government seems to have been begun in the state of Iowa.[16] A number of reforming spirits in the city of Des Moines had become interested in this problem, and when they learned of the success of the Galveston plan they proceeded with renewed courage and energy to foster this plan, but not without modifying it considerably. They retained the core of the plan, namely, the body of five commissioners elected at large, invested with all the powers of the local government, and to this they added provisions for non-partisan nominations and elections, for the merit system in appointments, and for the initiative, referendum, and recall. In this altered form the commission plan was approved by the Iowa legislature in 1907 as an optional charter for cities of the first class, and the privilege of adopting it was subsequently extended to smaller cities.

This so-called "Des Moines plan" of city government was immediately given the widest publicity, and propaganda for its adoption elsewhere was carried on throughout the land. Other variations of the commission plan were also developed, which only increased public interest in the commission government movement. *The National Short Ballot Organization*, putting itself behind the movement, distributed tens of thousands of pamphlets in explanation of the plan. The question of its adoption became a subject for intercollegiate and high school debates, while newspapers and periodicals everywhere took up the discussion.

Never in American history had the problem of municipal organiza-

[16] Chang, *History and Analysis of the Commission and City Manager Plans of Municipal Government in the United States*, pp. 75–82.

tion aroused such keen discussion, and never did a new plan spread with such rapidity. In 1914 the number of commission-governed cities, large and small, was estimated at over three hundred, and thereafter the number increased until perhaps five hundred cities had this plan of organization.[17] To be sure the very largest cities did not adopt it, and it was the cities of under 20,000 population which made up the greater part of the list. Nevertheless a reliable list published in 1923 names twenty cities of over 100,000, and twenty-nine others of over 50,000 which operate under the plan.[18] If anything was needed to prove that the American people had not taken the principle of the separation of powers to their bosoms as indispensable, at least in municipalities, the commission government movement proved it. And if any demonstration was necessary to establish the fact that the separation of powers is not the *sine qua non* of good city government, the success of the commission plan in hundreds of cities for more than a decade has furnished it in ample measure.

The city manager plan. While the commission plan was being pushed forward in the years after 1907, another principle of municipal organization was beginning to receive independent consideration. This is what may be called the business-manager principle.[19] In April, 1908, the city of Des Moines went under the commission plan of government which bore the city's name. But in January, 1908, the city of Staunton, Virginia, having learned that the commission plan could not be adopted in that state because of certain constitutional provisions, had proceeded by ordinance of the council to create the office of general manager in order to introduce better business methods into the city government. This general manager, who was appointed by and under the control of the mayor and the council acting jointly, was to "have entire charge and control of all the executive work of the city in its various departments, and have entire charge and control of the heads of departments and employees of the city." The mayor and council did not abdicate in favor of this new official, but merely used him to increase their own effectiveness.

The principle embodied in this new plan of organization was in no

[17] Beman in his *Current Problems in Municipal Government*, 1923, pp. 518–26, lists 301 cities of 5,000 or more inhabitants which operate under the commission plan, and says that "the commission plan is also in effect in two or three hundred villages and towns of fewer than five thousand people."

[18] Beman, *Current Problems in Municipal Government*, pp. 518–519.

[19] The more important works dealing with the city manager plan of government are listed in the references at the end of Chapter XIII.

sense a novel one. In this country numerous school boards, park boards, and other similar bodies, as well as hundreds of important private corporations, have for years been carrying on their business affairs through appointed superintendents and managers. Abroad the French city's *maire* (mayor), although not a trained expert, or the Prussian city's *Bürgermeister*, occupies very much the position of a municipal business manager, whereas the English town clerk would need only the addition of certain other functions to make him also an actual city manager. However, the application of the idea to general city administration was new in this country, and due credit must be given to those who initiated it here.

The essential and admirable principle in the manager plan is the separation of the function of legislation from the function of administration without a separation of powers, coupled with a concentration of administrative responsibility in the hands of one man under the control of the council. Now the commission plan had not been long in operation before students began to observe and its proponents began to admit, that while this type of organization completely confused the functions of legislation and of administration, it failed to centralize sufficiently the responsibility for administration. We shall say more of this hereafter. Through the manager principle these defects seemed to be overcome. The next forward step, therefore, was the combination of the short-ballot, small-council feature of the commission plan for legislation, with the manager principle for administration. The result was the so-called "commission-manager" system of city government, which was first proposed about 1910 probably by Mr. R. S. Childs of short-ballot fame, was embodied in a bill for a new charter act submitted by the Lockport, New York, board of trade to the New York legislature in 1911 but not passed, and was adopted by the South Carolina legislature in 1912 for the small city of Sumter, where it went into effect in 1913. Soon after this the plan was adopted in a number of other cities, among the earlier ones being Dayton and Springfield, Ohio, which adopted the plan in home rule charters in 1913.

As in the case of the commission plan, city manager government soon began to enjoy great vogue. The *National Municipal League* swung strongly into line behind it. The city managers themselves promptly formed a national association which began to hold annual meetings. Other forms of publicity also spurred the movement forward. The Great War had in the meantime begun in Europe, but it did not at

first deter Americans from discussing domestic problems. All things considered, conditions were favorable to the establishment of the new plan in many small cities and even in some of larger size. By March, 1924, it was possible to report 246 cities operating under city-manager charters, and 73 more which had the plan provided for by ordinance, making 319 cities in all with a combined population of about 5,000,000.[20] The spread of the manager plan was not so rapid as that of the commission plan. Furthermore it was adopted in a number of commission governed cities, so that it has cut down to some extent the number of cities under commission government.

Conclusion. As we consider the entire development of municipal organization from colonial days to the present we can see several distinct tendencies. It is sometimes said that we have simply boxed the compass, beginning with a simple, compact municipal organization in colonial days, passing though a stage in which complication and division prevail, and returning to simplicity and unity in the commission and city manager plans. To some extent this generalization is true, but it is not all of the truth. The colonial borough governments had local judicial powers as well as legislative and administrative functions. The former have been largely lost by our modern cities, and are perhaps beyond recall. Thus the separation of powers idea in municipal government accomplished at least this one thing, although the present tendency seems to be to abolish the separation of legislative from administrative powers. At the same time the commission and city manager plans, having been consciously worked out to serve certain definite purposes, represent a distinct advance over the colonial borough governments in a number of important respects, so that it cannot be said that cities have returned to the precise point which they left 150 years ago. In these as well as in the strong-mayor plan there is an evident intention to concentrate responsibility and power in one or a few persons. This tendency illustrates a reaction of reason against the excessively democratic notions of the early and middle nineteenth century. But in all that we say we need to remember that great diversity still prevails in municipal organization, and that sweeping generalities are likely to be untrue.

REFERENCES

See end of Chapter XIII.

[20] City Managers' Association, *Tenth Yearbook*, 1924, pp. 6–12, 191–97.

CHAPTER XIII

AMERICAN FORMS OF CITY GOVERNMENT TO-DAY

THE IMPORTANCE OF THE STRUCTURE OF GOVERNMENT

"Faith in machinery is, I said, our besetting danger, often in machinery most absurdly disproportioned to the end which this machinery, if it is to do any good at all, is to serve; but always in machinery, as if it had a value in and for itself." Thus wrote Matthew Arnold in a severe arraignment of the Philistinism of his countrymen 50 years ago—and thus might we write of our own countrymen to-day.[1] In our economic life we put our faith in machinery, money, coal, resources. In social and political life we stress the need of more and better organization, which is but another form of machinery.

Now such critics as Matthew Arnold are entirely correct when they say that the moral and cultural improvement of the individual will not be accomplished by machinery alone or by organization. That "the idea of perfection as an *inward* condition of the mind and spirit is at variance with the mechanical and material civilization in esteem with us," is a sentiment with which most persons will agree, for "culture looks beyond machinery." But it would be folly to argue from these truths, as is sometimes done, that no attention should be given to questions of organization and machinery. In the work of a large social organization handling important functions for thousands and even millions of people, practical considerations cannot be ignored. Officers, organization, and machinery, are simply indispensable as tools for the accomplishment of great social purposes. Indeed, unless the "machinery of government" operates successfully and effectively, those conditions cannot be established in which a good life is generally possible. A Tolstoy may raise himself to a position of philosophic grandeur under the very worst of governmental conditions, but for the mass of men good government is essential to a good life.

[1] *Culture and Anarchy*,—Sweetness and Light.

It will not do, either, to argue that good administration has nothing to do with the form of the government. Pope's oft-quoted couplet is founded upon a faulty premise.[2]

> "For forms of government let fools contest;
> Whate'er is best administer'd is best."

No one of intelligence who has had even the least administrative experience would assert today that the form of government had nothing to do with effectiveness in administration. On the contrary, there is the closest possible relationship between the two. It is not the writer's intention to say that the form of government is everything; and everyone knows that the same form of government is not adaptable to all places and all peoples. The form of government is but one factor in getting good administrative results, but it is a very important factor. It is one of the indispensable means for accomplishing the generally desired result: certain, effective, economical administration.

It is the good or bad fortune of American cities to-day to have a variety of forms of government from which to choose. French city governments are practically all cast in one unalterable mold, and the same is true in large measure of English and German cities, although each of these countries differs from each of the others in its prevailing type of municipal organization. In this chapter we shall deal primarily with the forms of city government in the United States.

HOW TO COMPARE FORMS OF CITY GOVERNMENT

The final and only true test of any form of governmental organization lies in the results which it achieves in practice over a long period of years. Merely to record the facts of such achievements over any extensive period of time for a number of cities under different forms of government would require a staff of workers in every city and an expenditure of money not now available either to cities or to political scientists. To conduct at a later date the researches into the recorded data needed to give a proper evaluation to the facts ascertained would require enormous labor and the use of highly refined statistical methods. The conclusions finally set down would even then be open to the gravest criticism. Who can say that the cause of the lowering

[2] *Essay on Man.*

of the debt in the city of X, or the high efficiency of the police in the city of Y, is due to the city's having a particular form of government? It may be due to an unusually able director of finance or commissioner of police; it may result from an excellent personnel and morale in the department, or from high public standards enforced by a particularly intelligent citizenry, or from special methods of work, or from some other factor, or,—as is more likely—may be the result of a combination of factors. In fact, a statistical study of results achieved could be of value only if it covered a large number of cities over a number of years under conditions which were substantially the same in all places. Such a study is not at present possible.

The factors which make for good or bad government are various and complicated. They include (a) the quality of citizenship in the community, considered from the points of view of integrity, intelligence, and interest in public affairs; (b) the character of the parties; (c) public traditions; (d) the quality of the personnel selected for the numerous posts in the government; (e) the methods of work and procedure; (f) the organization or form of the government; (g) the powers of the government; and undoubtedly many others. The basic factor is, of course, the character of the people themselves. The other factors depend so much upon it, and upon each other, that it is quite impossible for political scientists with their present knowledge and resources to isolate any one factor and to study it alone.

The so-called inductive method is quite out of the question, therefore, and we are forced to fall back upon the deductive or *a priori* method of analysis. Instead of exploring a great mass of facts in order to ascertain sound principles of organization, we first find certain principles drawn from the experience and reason of men, and then we proceed to test the different forms of government by determining whether they do or do not conform to our principles. This method is not perfect by any means, yet much can be said in its favor. It is practicable. It is expeditious. If the principles used as tests are the result of study and experience they are very likely to be sound, and if they are not sound a small amount of research will easily show their weaknesses. But we must first state the essential facts concerning different forms of city government. The three most important forms in the United States to-day are the strong-mayor or independent-centralized-executive type, the commission type, and the city-manager or controlled executive type. A little attention needs, however, to be given first to certain older forms.

DECENTRALIZED FORMS OF ORGANIZATION

We have previously pointed out that in the form of municipal government which existed in the colonial boroughs the council originally held in its hands nearly all the reins of authority. By piecemeal this plan of organization was changed in some places even before the Revolution, and in the period from the Revolution to the Civil War the process of change went forward even more rapidly, although not along uniform and settled lines. From this process of experimentation there emerged a number of different forms of city government which exhibited only two important characteristics in common, a continuance of the council as the chief organ of the government, and a high degree of decentralization in the administration. We call these forms, in contrast with the three more recent plans of organization, the decentralized forms of organization. The difference is in many cases one of degree rather than of kind. Survivals of these various decentralized plans of organization are still to be found in many places. The student may study with profit the charters of the city of Minneapolis and of the city and county of San Francisco. Detroit, Los Angeles, and Bridgeport, in their extensive use of boards for administration, bear some resemblance also to the older plans.

It is impossible to make a precise statement of the characteristics of these various older plans, but in general we may set down the following points:

1. The council, a fairly large body, in many places elected by wards, and sometimes divided into two chambers, had control of part of the city's finances, and of a number of the administrative departments. It also passed the ordinances, subject in most cases to the veto power of the mayor.

2. The mayor was separately elected by the voters. His appointing powers were very limited, as a rule, although in many cases he had control of the local police department. He had some legislative power, however, in that he might recommend legislation and could also veto measures passed by the council. In some cases also he presided over the council.

3. Usually there were one or more elective department heads whose powers were specified in the charter and who were subject to little or no control by either the council or the mayor in the management of their departments.

4. One or more elective or appointive boards were also to be found

in many places. There were boards of health and of public works, police boards and park boards, but very few cities had the same arrangements. Some of these boards had independent financial powers as well as extensive control of their own policies.

The general arguments in favor of so much division of authority within the city government need only to be stated. It was supposed to be more safe, economical, efficient, and democratic to have separate officers and boards handling separate functions and to some extent checking each other, than to put all the power of the local government in the hands of one body. It was considered safer because then, although one board or department became corrupt, the others might still be uncontaminated and indeed might exercise a healthy checking influence upon the backslider. Economy would probably result because, with a division of functions, no single office or board membership would require much time and thus free services could be obtained. Greater efficiency was also supposed to follow since each board or officer could pay attention to just one problem and could therefore become expert in the handling of it. In the case of boards the argument was frequently heard that they would insure continuity of policy as well as high efficiency. Finally it was supposed to be democratic to have many officers and boards elected by the voters and directly responsible to them.

In tracing the development of municipal government in the United States we have already adverted to the defects inherent in such unintegrated schemes of organization. The rise of those twin-evils, the boss system and the spoils system, in American cities, brought all departments of the city government under one uniform and malign control. The creation of many separate governing bodies even when carried to its extreme did not avail to save the cities. For the same reason, too, economy and efficiency did not generally result. It is true that the forms of democracy were preserved, but the long ballot thrust into the voter's hands made the substance of democracy impossible. The voter could not choose with intelligence all the officers and representatives required in such complicated governments. He did the only thing possible for him to do—he voted the ticket of one or the other of the parties.

Where party bosses did not direct affairs from behind the scenes other difficulties arose. Josiah Quincy, mayor of Boston for six years a century ago, has recorded some very typical experiences. In 1823 the mayor and aldermen accepted an important gift from a benevolent citizen, only to find that the common council refused to ratify the

acceptance, to the embarrassment of all concerned. At about the same time the council appointed three surveyors of highways who in a very short time "regarded themselves in the light of an independent board." "The Surveyors of Highways claimed one species of jurisdiction over the streets; the Mayor and Aldermen another; the Board of Health a third. In consequence of the obscurity of the limits of the divisions of their powers, there was some difficulty, and occasionally something arbitrary in the claims and proceedings touching their respective jurisdictions. . . . What was house dirt, and what was street dirt, and whether yard dirt belonged to either, and to which, began to be questions of solemn and dividing import." [3] The board of health even sent an order to the mayor and aldermen to appear to show cause why they should not remove a pile of rubbish "and nauseous substances" which had collected alongside of one of the municipal wharves. And as if these "embarrassments from the Board of Health" and the surveyors were not enough, the overseers of the poor presented strong opposition to the attempt of the council to dispose of the almshouse. Such were the municipal amenities in the city of Boston a hundred years ago, and every city which divides its powers out among many authorities suffers in some degree from the same sorts of friction and discord.

Most difficulties of the type described in the preceding paragraph might have been smoothed out in time. If then the spoils system had not arisen in cities, and if citizens generally had been willing to devote more time and more conscientious effort to municipal affairs, such loose-knit plans of organization as have just been described would probably have proved more satisfactory. As it was they did not all work badly by any means, and even those which remain to-day perform some of their functions with tolerable satisfaction. But with the increase of municipal functions and the rise of tax rates emphasis has come to be placed on more businesslike organization and methods. The trend to-day is toward integration and consolidation. The decentralized forms of city government have in general had to go. In their places have come the more compact and responsible types of organization which are now to be described.

THE STRONG-MAYOR PLAN

A form of municipal government which was evolved in the latter part of the past century and which came to have considerable vogue

[3] *Municipal History of the Town and City of Boston*, pp. 63–4.

is the independent centralized executive plan. Popularly it is known as the "strong-mayor" or "federal" plan, but the name really makes little difference. In one form or another this type of government exists in Boston, Philadelphia, Detroit, St. Louis, Denver, Seattle, and a number of other places both large and small. One of the best charters founded upon this plan was that which existed in Cleveland from 1913 to 1923. In spite of numerous variations in detail, these different cities conform in general to the fundamental principles of the strong-mayor plan, which are somewhat as follows:

1. **Separation of powers.** There is a sharp division of powers between the mayor and the council, one being called the executive and the other the legislative body.

2. **No separation of functions.** But there is not a clear-cut separation of functions. The function of legislation, for example, is shared by both the mayor and the council. The mayor is not a member of the council but has the power to recommend ordinances and resolutions and may veto measures passed by the council.

3. **Mayor is chief executive.** The mayor has the power to appoint and to control all the chief municipal department heads. The council has in general no power to veto his appointments, although Philadelphia, Seattle and some other cities present exceptions to this rule.

4. **Mayor has financial powers.** The mayor usually has the further power of preparing and submitting the annual budget. Under the Boston charter the council may not even increase or add any item of appropriation, and if it attempts to reduce requests for appropriations the mayor may absolutely veto its action.

5. **Council usually small.** The council under this plan varies in size and composition but the recent tendency is to make it a small body elective at large.

6. **Council primarily legislative.** The chief functions of the council in this plan are the passage of ordinances and resolutions and the approval of bond issues and budgets.

The strong-mayor plan is the culmination of a long effort to centralize in one man the responsibility for the administration of city affairs. It clings to the traditional American separation of the executive from the legislative department, and is in some respects a copy of the form of the national government. At the same time it is in some respects unlike the latter, especially where the mayor's appointments do not need confirmation by the council.

In practice there can be little doubt that the strong-mayor plan is

superior to some of the decentralized forms of city government which preceded it in this country. If not complicated by the existence of a number of appointive or elective administrative boards, it provides a fairly simple and visible form of organization, with a short ballot and a high concentration of administrative responsibility. It makes the office of mayor the important thing which the less favored elements in the community expect it to be, for as one poor soul said to Brand Whitlock, then mayor of Toledo, "You are the father of all." [4] It gives the people a person a little higher than the ward aldermen upon whom to pin their faith and affections. Perhaps in many cases it gives them a sort of local political leadership,—a deceptive sort of leadership, indeed, for no mayor can do all the things which people expect of him, and some cannot do nearly all of the things which they promise to do.

There are important considerations, however, which lead to the conclusion that this is not the final plan of organization for American cities.

1. In the first place the relations of the council to the mayor are in most respects unfortunate. The attempt to cut the council off completely from the control of administration is illogical and cannot turn out happily. If the council is weak, as it is likely to be, the administration will not be subjected to healthy, normal scrutiny and criticism. If it is strong it will use its every resource to control the administration in spite of the charter. It will quibble over budgets and bond issues, and it will endeavor to pass detailed ordinances regulating administrative work in such ways as will really handicap the mayor. Indeed the citizens of some "strong mayor" cities are constantly regaled or disgusted by the chronic state of guerilla warfare existing between the mayor and the council. The shifting of blame from one to the other is not difficult, while the temptation of each to pass ticklish questions on to the other in order to put him or it "in a hole" is always strong. The existence of a strong boss or ring behind the scenes may serve to minimize such warfare, but such a cure is worse than the disease.

2. It is the theory of the strong-mayor plan that if the office of mayor is made sufficiently powerful, able administrators will be attracted to it, and that the voters will select only able men to fill the post. This is not exactly a case of "going up in a balloon to think," as Mr. Plunkitt would say, for there is a measure of truth in the proposition, yet it is a case of reasoning without having all the facts in hand. If

[4] *Forty Years of It*, p. 219.

it were true, then by parity of reasoning so powerful and important an office as the presidency of the United States could never be gained except by a man of the most outstanding ability. But we know, as a matter of fact, that the contrary is true, and that it is far more true of the mayoralty even in large cities than of the presidency. We need to apply in this case some of the ideas expressed by Bryce in his famous chapter, "Why Great Men are Not Chosen Presidents." [5]

What are the facts? They are that some great and able administrators have been chosen mayors of large cities, that the great majority of our mayors have been of only average ability and of little or no experience; and that a considerable percentage of them have been men of no demonstrable fitness for their positions. The results under the "strong-mayor" plan have not been much different from those under other plans.

The following propositions are probably not very far from the truth: a. Men of proved executive ability are rare in municipal politics. They may be in the professions or in private business positions, but they are not ordinarily attracted into politics by the gambler's chance of some day becoming mayor. b. The men nominated for the mayoralty are usually men who have the backing of some party, which is to say that ordinarily they are men who have done party organization work and have made themselves "available" candidates by party regularity and by failure to take positive stands on important public questions. If they are not of this type, then they are usually men who are able to take the "popular side" of some issue before the public, or men of great vote-getting ability. The voter's choice is practically restricted to the local residents who are offered as candidates, and usually the choice is not between Black and White but between Medium and Light Gray. c. In the campaign it is popularity, interesting personality, organization, and hard work which count most in garnering in the votes. Executive ability is at a discount, while promises as to policy are at a premium. It is far better for the candidate to advocate the five-cent street car fare, and to denounce wealthy corporations, "big business," and "the enemies of the people," than to speak in the cold hard facts of debts reduced and miles of pavements laid.

The surprising thing to one who follows municipal campaigns is not that we do not get more trained and capable mayors but that we get as many as we do; and that the results are not more disastrous even

[5] *The American Commonwealth*, I, Ch. VIII.

where men of slight ability are chosen. It must be, on the one hand, that a considerable number of voters do pay some attention to proved ability; and on the other that public traditions, the fear of disgracing the party, and the binding force of existing laws, ordinances, and administrative practices, do prevent a mayor from doing great damage in one or two terms. Even a strong mayor cannot go so far wrong as to make his acts irremediable or himself unpunishable. The whole system is more powerful than the individual.

3. A very important objection to the strong-mayor plan of government is the resultant confusion of politics and administration. The mayor is both politician and administrator. He gets into office through politics, and it is only through politics that he can have himself re-elected. If the situation demands, as it usually does, that he reward his party and personal friends, he must do so to the extent of his ability or lose support at the next election. It will not do to "go back on a friend," for that is the unpardonable sin in municipal party politics.

But if he yields to party and personal demands to any great extent, the administration becomes perverted to the uses of politics. Experienced men are removed from the city's payroll to make room for new and inexperienced ones. There is little opportunity to develop a professional spirit in the civil service. Friends and supporters are placed in office not because they are fitted for administrative posts but because they can be of political service to the mayor and his party. They, too, must spend much time in political work at the expense of administration. There is a strong incentive to create sinecures in order "to take care of" more partisans, and to give valuable public contracts and concessions to friends. The result is a low moral tone and reduced efficiency throughout the administration, and in extreme cases positive corruption. Much may be done to prevent these effects by the establishment of the merit system for appointments and by the enforcement of strict charter provisions dealing with purchasing and contracting, but these alone cannot prevent all the possible evil effects of the complete conjunction of political obligations and administrative power in the person of one man.

4. There is, finally, a major fallacy in the theory of popular control over an administrative officer. The theory is that direct responsibility to the voters is a very awesome thing, and that the voters will follow closely all that is done. As a matter of fact voters cannot, or at least do not, pay much attention to problems of everyday administration.

This is no criticism of the voter, for in the highly specialized conditions of modern society only the specialist can attempt to understand the detailed problems of city departments. What the voter keeps his eyes open for are the questions of major policy. This is as it should be, for on such questions the voter's judgment is generally shrewd.

In a very true sense, therefore, the problems of administration are not impressed upon the mass of the voters. A very effective administration may be very unpopular because it seems to be dominated by the wealthy, or because the mayor has taken some unpopular position on a question of policy. On the other hand a totally inefficient and even corrupt administration may have popular support. Administrative success and political success are often entirely different things.

But even if the voter should give close heed to administration, and should be outraged by the inefficiency of some mayor and his subordinates, he could do little or nothing to correct matters. The recall exists in only a few strong-mayor cities, and is infrequently used because it is so clumsy an instrument for removing officials. A mayor's two or four year term is practically guaranteed to him, unless he indulges in gross and open violations of the law. True he may be and in many cases will be defeated when he comes up for reëlection, but that is by no means a severe punishment. It is but one of the fortunes of politics and is always a probability within the calculations of the politician.

These adverse criticisms of the strong-mayor type of organization must not be understood to be an unqualified condemnation of the plan. In the realm of city government and politics there are very few institutions which may truthfully be termed perfect. There are no absolutes. When all factors are considered, one form of government is better than another only in degree, or perhaps in a single quality. The strong-mayor plan is better than some forms which went before, and where the proper mayor can be obtained and perhaps retained for several terms excellent results may be secured. Its relative advantages will stand out more clearly when some other plans have been reviewed.

THE COMMISSION PLAN

Among the larger cities of the country operating under some form of the commission plan are Buffalo, New York; Newark, Jersey City, and Trenton, New Jersey; St. Paul, Minnesota; Des Moines, Iowa; Omaha, Nebraska; Portland, Oregon; Spokane, Washington; Salt Lake City, Utah; Oakland, California; San Antonio, Dallas, Houston,

and Fort Worth, Texas; New Orleans, Louisiana; Memphis, Tennessee; and Birmingham, Alabama. Smaller cities operating under this plan are to be found in almost every state. The recent popularity and the widespread existence of this plan make it important for us to give it close examination.

1. **Unification of both powers and functions.** The most notable characteristic of commission government is the complete fusion or unification in the hands of one elective body of men of all the powers and functions of the local government. Politics and administration, legislation and execution are vested in the same hands.

2. **A small council.** The council or commission is small, consisting usually of not over seven, and more commonly of only five members.

3. **Joint and several responsibility.** The commission has group responsibility. It legislates as one body, but each member is personally responsible for the administration of one major department.

4. **Mayor has little power.** The mayor has generally no veto power and no special power of appointment. He is sometimes elected by the voters as mayor, and in other cases is designated by the members from among their own number. He is the presiding member of the commission and titular head of the city.

5. **Non-partisan election at large.** The members are usually elected at large upon a non-partisan ballot, and they receive salaries.

6. **Popular control.** The initiative, referendum, and recall are usually provided for but they are not essential to the system.

When compared with earlier forms of city government, the commission plan displays some rather striking advantages. In the first place the voter's task is reduced to very simple terms. Where substantially all of the powers of the local government are vested in five commissioners at large, the voter is not faced by an impossible problem. This is particularly true in a city like Spokane where two commissioners are elected at one election and three at the next. In St. Paul, on the other hand, the task is not so simple, for there the voter must elect every two years a mayor, six commissioners, and a comptroller. The Des Moines plan calls for the election of five at one time.

Furthermore the government is easy to see, easy to understand, and easy to follow. It consists of but one small body, whose meetings must of necessity attract a great deal of public attention. The small size of the body makes possible the expeditious handling of the public business. Election at large makes each member responsible to the whole city. The complete unification of powers makes it somewhat

difficult for any commissioner to shift the responsibility for unpopular action to anyone else. This is a real advantage, and so too is the reduction of the number of administrative departments to four, five, or six.

These meritorious features of the commission plan are so important as to deserve more extended discussion than is possible here. Unfortunately the countervailing defects are harder to explain and call for the use of more space.

1. The complete fusion of all power and of both legislative and administrative functions in the same group of men results in practically eliminating from the government the important function of criticism. Private citizens and their unofficial organizations may attend meetings of the commission to voice their protests against obvious inefficiency, extravagance, or injustice, and the newspapers may support them, but the governmental organization itself provides no adequate critical machinery. Commissioner A has difficulties enough in his own department without taking on himself the function of criticising the work of commissioners B, C, D, and E, and so it is with each member. The desire not to antagonize fellow-members by intermeddling in their affairs is also a powerful factor, for when the annual budget is up for passage each member needs the support of every other. To overcome this defect some of the commission-governed cities have followed the lead of Houston in setting up the mayor as a general coördinator, supervisor, and critic of administration, but even this expedient has not fully accomplished the desired result. One man is not equal to a body of men for purposes of complaint and criticism.

Because of the deficiency which has just been pointed out commission-governed cities are unable to gain the full benefit of a budget system. A budget system presupposes that the body which is to spend the money presents its itemized requests to another body which has the power of criticism, of reduction, and finally of appropriation. Moreover the budget bureau which is to prepare the estimates before presentation to the legislative body should itself be somewhat independent of the departments which are to expend the money. Neither of these conditions is entirely fulfilled under the ordinary commission plan. The commissioners present their requests to a body of which they are the only members, and if there is a budget bureau it will be attached to the department of one commissioner or perhaps under the control of all. There is, in other words, no effective outside criticism of requests. To supply this deficiency the St. Paul city charter pro-

vides for a separately elected comptroller who has power to prepare a budget annually which may not be increased by the commission by more than three per cent of the total or more than ten per cent for any one department. In Houston the mayor submits the budget, and may veto items in the appropriation bill which the commission passes. These deviations from the commission plan both illustrate and in part correct the defect inherent in the normal commission plan.

2. The commission plan completely fuses politics and administration, and in this respect exhibits the same defect as the strong-mayor plan discussed above. There is this difference, however, that under the commission plan no one of the commissioners can control enough patronage to build up as strong a personal machine as the mayor finds possible in the other plan. At the same time, the commission plan does not ensure the election of able, trained administrators any more than does the centralized executive plan. In both plans the candidates must submit themselves at recurrent intervals to the test of political availability. The man who is the best or most assiduous politician is most likely to get himself reëlected, but such a man is not necessarily the best administrator. Indeed he may have to neglect administration for politics. It is simply too much to ask of the average candidate that he be at one and the same time a good executive and a good representative of the voters' political wishes.

3. Under the commission plan it is exceedingly difficult to build up a permanent staff of trained administrators. The ideal of a professionalized public service is incompatible with a system in which the department heads themselves are in politics. Because terms of office are short, and chances of reëlection always doubtful, the best fitted persons will in many cases not attempt to run for office. In the end, if not from the beginning, the commission comes to be filled with men in no way distinguishable from the type of men who are everywhere chosen for aldermen under other forms of organization. This fact has greatly upset the predictions of those original advocates of the commission plan who expected or hoped to see the commissionerships go to a new type of business and professional men, men who would sacrifice a little of their time to go into politics for the sake of the public service, and who would call to their aid only men of training and ability. It was even expected by many that the elected commissioners themselves would act only in a supervisory capacity while the actual work of administration in each department was carried on by a full-time professional head. This hope was also commonly disappointed, for

the commissioners wanted direct and personal control of their departments, and public opinion was generally opposed to the payment of salaries to two men to head each department. Thus the work of actual administration has fallen to the elected commissioners, who stay their brief day in office and then move on to give place to others. Instead of a permanent professional group of administrative servants, the commission-governed city has usually at the head of its departments a number of transient and only partly trained local residents.

4. It is also worthy of note that no one person is completely responsible for the entire administration under the commission plan. Instead there is a three, five, or seven headed organization. While the group is responsible for legislation, each commissioner is personally responsible for the administration of his department. The important question that remains then is, to whom is he responsible? In theory his responsibility is double, to the entire commission on the one hand, and to the voters on the other. In practice his responsibility to the commission is very slight. For reasons which have previously been stated, the commissioners prefer not to interfere with or to criticise each other's work. On matters of policy and appropriations individual members may find themselves overruled by their colleagues, and this will be particularly true when the commission is divided, as it frequently is, into factions; but mere ordinary administrative inefficiency will generally go unchecked. Hence, though there may be great differences in the effectiveness of the work done in the various departments, yet there will be no one responsible for all that is done. Furthermore, new duties which fall between two departments may go unprovided for, since neither of the established departments may wish to expend its funds on the new service. Where unity of command is lacking there will be weak spots at the points of contact between the several departments.

5. If the commission itself does not supply effective and unified control over the entire administration, we have left to consider the question of popular control. Will not the people themselves keep that close and careful watch over the commission which is necessary to good government? In the fields of legislation and policy the commission plan, with its short ballot and concentrated power, has proved highly amenable to popular control, but this fact has not resulted in a corresponding improvement in the processes of administration. As we have said before, the voter is not in a good position to pass upon problems of administrative detail. Hence he is not likely either to

elect commissioners upon the basis of their administrative capacity and success, or to defeat or recall them for their deficiencies in this field.

It would seem, therefore, to be a fair conclusion that the commission plan was a great forward step in municipal organization in that it simplified and unified the government and made popular control more direct and effective in all important matters of policy, but that it has failed to achieve the administrative results which were expected of it. It has not unified the administration, it has not put it upon a permanent and professional basis, and it has not exploited to the full all the possibilities of the merit system or of scientific budget procedure. In large part these defects are due to the failure of the commission plan to provide an independent organ for criticism of the administration.

6. The commission plan practically requires that the council be a small body elected at large. From the beginning it has been asserted by opponents of this form of government that such a council cannot adequately represent all the people. Under the ordinary system of election at large a single party or a single class may elect every member of the council. As applied to small cities the writer has never considered this argument to be particularly weighty, nor have the citizens themselves raised great objection to it. The gain which comes from having a small and wieldy group in control of municipal affairs will, as a general rule, more than outweigh the loss in representative faculty. In the case of large cities, however, the drawback is a real one, and one which cannot be obviated without such an expansion in the council as would make it cease to be a mere "commission."

THE CITY-MANAGER PLAN

Twenty-five years ago the independent-executive plan of municipal organization seemed to be the logical next step for the improvement of city government. Twelve years later the commission plan was carrying all before it. To-day it is the city-manager plan which rides upon the crest of the wave of popularity. Is time to prove as fickle with it as it has proved with the other two? Time alone will tell, and its verdict has not yet been rendered. We must still content ourselves with careful *a priori* analysis, and be wary of prophecy.

Cleveland, the largest city in the list, has only this year (1924) gone under the city-manager plan. Dayton and Springfield, Ohio, the earliest important city-manager cities have had but ten years of experi-

ence with this type of organization. Akron, Ohio, made a half-hearted experiment with the plan and abandoned it after a few years of trial. Seven other cities of over 60,000 population have the plan in operation, namely, Sacramento and San Diego, California; Wichita, Kansas; Portland, Maine; Grand Rapids, Michigan; Knoxville, Tennessee; and Norfolk, Virginia. All told 246 American cities had city-manager charters early in 1924, and 73 others had made provision for city managers by ordinance. The combined population of all the city-manager cities was reported to be close to five millions.[5a]

The essential features of the manager plan can easily be stated.

1. **Unification of powers.** All the powers of legislation and of control over the administration in the local government are unified and vested in the hands of a council of one chamber. There is no separation of powers, no veto power; there are no important checks or balances.

2. **Separation of functions.** City manager charters attempt, however, to make a precise separation of functions, by provisions which are designed to restrict the council's work to legislation and control, and to compel it to vest the entire function of administration in the hands of an appointed city manager and skilled department heads appointed by him.[6]

3. **Short ballot.** In theory the council may be of any desired size, but in practice it is small and it is desirable that it should be so. Thus the short ballot is rendered feasible in the city-manager plan.

[5a] Since this paragraph was written in 1924, Cincinnati, Ohio, and Kansas City, Missouri, have both adopted the city manager plan, but neither has yet put it into effect.

[6] The distinction betweeen the "separation of powers" and the "separation of functions" is one not easy to grasp, yet it is indispensable to an understanding of the differences between the various forms of city government. The different functions in the process of government are outlined in Chapter IX. When each of the functions there noted is put into the hands of a separate functionary or group of functionaries, so that each does just one kind of work and presumably becomes especially proficient in it, then we have a separation of functions. This does not require a separation of powers in the usual sense at all. On the contrary, the separation of powers as we have it in the national and state governments in this country cuts squarely across the functions of government. Instead of making the executive purely executive, and giving him all executive or administrative functions, we in this country give him some legislative, some executive, and even at times some judicial work to do. Thus, instead of being specialized to perform one function, he has to do work of several different kinds. The same is true of the legislative body. For a discussion of this problem as applied to the field of national government, see W. F. Willoughby, *The Government of Modern States*, pp. 233–267.

4. **A single, trained chief administrator.** The city-manager, who is supposed to be selected on the basis of training and ability, has the authority to appoint all important administrative officers, to prepare the annual budget, and to control and direct the entire administration.

5. **Council control of administration.** The council has entire control over the manager through (a) its power to appoint him, (b) its power to dismiss him at any time, (c) its power to pass all ordinances and resolutions, subject to no veto whatever, (d) its power to control the purse, (e) its power to investigate his books and administration at any time, and (f) his duty to be present at council meetings and to answer all reasonable questions as to the city's administration.

6. **Indefinite tenure.** In order to build up a permanent service, the manager and the department heads are to be given indefinite tenure, subject only to the council's power to remove the manager and the manager's power to remove department heads.

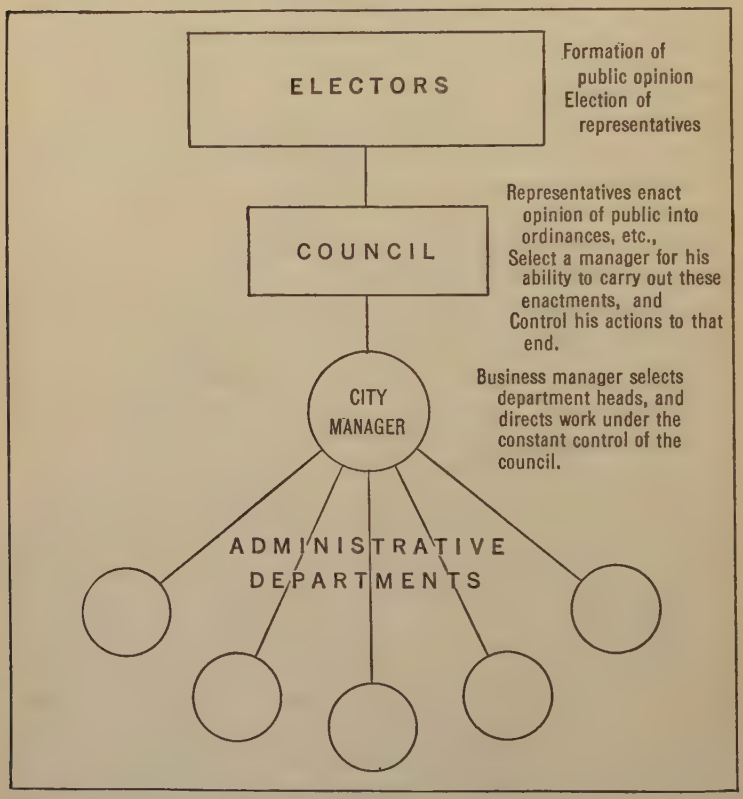
The plan can be explained by various analogies, for the city-manager should maintain much the same relationship to the council as the president of a university usually does to the board of regents or trustees, or as the superintendent of schools does to the school board, or as the manager of a business does to the board of directors of the corporation. In each case a single trained administrator, chosen and controlled by the board, manages the affairs of the institution, system, or business according to general policies laid down by the board itself.

We may then say that the city-manager plan provides for city government that natural subordination of administration to legislation which exists in the whole process of government under substantially all conditions. It is the people's function in democratic government to formulate general standards or policies to which the government should conform and, acting through parties and other organizations, to nominate and elect representatives from time to time who will carry these policies into effect. Subordinate to the voters are the elected representatives. It is their function to formulate more precisely the dictates of public opinion, to enact this opinion as fully as possible into law, and to see to it that the laws are actually carried out. Directly subordinate to this legislative function in the normal process of government is the administrative function of enforcing the law from day to day. But the work of administration is variegated and complex. If it is to be well done it calls for men and women of special training. Hence it requires a special organ and cannot be performed directly by the representatives themselves. The accompanying chart of the city-

manager plan will present the picture to the eye more quickly than it can be explained in words.

In the statement given below of the characteristics of the city-manager plan will be found some of the leading arguments in its favor. It is desirable now to examine some of these points a bit more fully.

ESSENTIALS OF THE COUNCIL–MANAGER PLAN OF CITY GOVERNMENT


ELECTORS
Formation of public opinion
Election of representatives
COUNCIL
Representatives enact opinion of public into ordinances, etc.,
Select a manager for his ability to carry out these enactments, and
Control his actions to that end.
CITY MANAGER
Business manager selects department heads, and directs work under the constant control of the council.
ADMINISTRATIVE DEPARTMENTS

1. The complete unification of the powers of the city in the hands of a single chambered council serves to restore the council to its original and natural position. The unhappy experiences of American cities in the nineteenth century with their divided and disintegrated governments pointed the way to a reunification of powers. It became the aim of the better-advised municipal reformers to clear away as much as possible the separate boards and officers and the checking powers

of the mayor, and to raise the council once more to its old position of dignity as the actual and responsible governing body of the city. In no other way did it seem possible to attract into the council the type of men needed there, to have all projects considered on their relative merits, or to preserve the representative and deliberative functions of the government. If the council were unimportant the abler and busier types of men would spurn membership therein. If the mayor, the council, and various boards and officers controlled separate and distinct municipal functions, or had checks upon each other, there could be no centralized responsibility for the city's work. Some of the city's interests might suffer while certain departments prospered unduly. On the other hand, if the mayor were made dominant, a petty dictatorship would be set up, which would not be fully representative of the voters and would proceed without full deliberation. A consideration of these various alternatives forced many students and reformers to the conclusion that the chief hope for the betterment of city government lay in the rehabilitation of the council. Unification of all municipal power in its hands seemed to be the only real solution.

2. The commission plan was in fact the first important reform plan to accomplish this unification, and it is greatly to the credit of the founders of commission government that they were clear-headed enough, and bold enough, to move straight in this direction. They made the council important and thus concentrated public attention upon it. But at the same time they failed to keep in mind the functional distinction between the making and the execution of policy. The same five or seven men were to formulate public policies and to carry them into effect, to enact and to administer the law. Now these two things are entirely distinct. A representative body is fitted to determine what the general public policy shall be, but in the complex conditions of modern urban life it takes men of special training and ability to do the administrative work.

Unfortunately, however, as we have already pointed out, the commission plan in practice made difficult if not impossible the creation of a separate, permanent, and expert administrative staff. In the interests of economy, and to give themselves a free hand in their work, the elected commissioners generally dispensed with the permanent department heads and began themselves to put in full time in administering their several departments. The press of administrative work, and the need of giving considerable attention to political matters as well, combined to force problems of general policy into the back-

ground. The commissioners in many cases became the defenders of their particular departments and the distributers of departmental spoils. The business or professional man who could not afford to give full time to the city for the salary of a commissioner would not run for the office, and in many places the commission came to be filled with spoils-vending politicians. Such was the result of the complete fusion of legislative and administrative functions under the commission plan.

The lesson which this experience teaches is one which local democracies must learn over and over again. "There is a radical distinction between controlling the business of government and actually doing it. The same person or body may be able to control everything, but cannot possibly do everything; and in many cases its control over everything will be more perfect the less it personally attempts to do." [7] Thus wrote John Stuart Mill many years ago, and in another place he said: "The business of the elective body is not to do the work, but to see that it is properly done, and that nothing necessary is left undone." [8] The city council should be given complete control over the whole of the city government, but it needs to recognize its own limitations as an inexpert, unprofessional body. Its function is to legislate, to control, to scrutinize, and to criticise. For it to interfere in the work of administration, where special skill is nearly always required, is to defeat the ends of good government.

It is this separation of functions which the city-manager plan is designed to effectuate. To this end it is provided in the ordinary manager-plan charter that the council may appoint, control, and remove the manager, but that under such general control the manager shall have the power to appoint the department heads and to direct the work of the entire city administration. The model charter of the National Municipal League, and the charters which have been framed upon the same lines, contain an additional provision substantially as follows:

"Neither the council nor any of its committees or members shall dictate the appointment of any person to office or employment by the city manager, or in any manner interfere with the city manager or prevent him from exercising his own judgment in the appointment of officers and employes in the administrative service. Except for the purpose of inquiry the council and its members shall deal with the administrative service solely through the city manager, and neither the council nor any member thereof shall give orders to any of the subor-

[7] *Representative Government*, Ch. V.

[8] *Ibid.*, Ch. XV.

dinates of the city manager, either publicly or privately. Any such dictation, prevention, orders, or other interference on the part of a member of council with the administration of the city shall be deemed to be a misdemeanor, and upon conviction any member so convicted shall be subject to a fine not exceeding or imprisonment for a term not exceeding months, or both, and to removal from office in the discretion of the court." [9]

This language is probably the most drastic ever proposed for or written into an American city charter with a view to excluding politics from the administration. So important is its purpose, however, that even more stringent language would be justifiable if it could accomplish the desired result. Mere words in a charter are not enough, of course. There must be understanding on the part of all persons concerned of the meaning and importance of such a provision, and an honest desire to have it enforced in letter and in spirit. In the faith that this separation can be accomplished the city-manager plan has been devised. If the experiment succeeds, local democracy will have made a great forward step. At least a partial answer will then have been given to the old question whether democracy can ever be efficient, for efficiency depends in large measure upon the recognition of expertness in administration.

3. The two advantages thus far described may be summarized as the unification of powers with a separation of functions. But the city-manager plan goes even farther than this. It not only permits the separation of the political from the administrative branch of the government, while retaining complete unity of control and direction in the hands of the political branch, but to the council which honestly tries to live up to the spirit of the plan it gives advantages not possessed by city councils under any other form of city government in existence in America. It gives the council the right to choose as city manager the most able and experienced administrator to be found in the country at the salary it can afford to pay. It stresses the expert and professional phases of municipal administration, giving the manager himself every inducement to hire competent department heads. It gives the council the right of constant contact with the manager and his chief subordinates at council meetings, where the manager and also usually the department heads must be in attendance to give advice, to answer questions, and to meet criticism. This relationship of "intimate detachment" between the political and the administrative branches of the

[9] Sec. 3.

city government seems to be far better than the complete fusion of the commission plan or the complete separation of the council and the mayor in the "strong-mayor plan."

Indeed, to the council which desires to give the best services possible to the people, the city-manager plan gives the opportunity to command a better trained, more unified, and more responsive administrative organization than is possible under the commission plan, the strong-mayor plan, or any older plan of organization in American cities. It does not and cannot guarantee perfection, but it provides the means and the incentive for giving the city the best administration possible under existing conditions. It combines the common sense and local political wisdom of the amateur representatives in the council with the training and skill of the permanent experts in the administration, yet withal it keeps the experts under popular control through the council, and thus avoids the development of irresponsible local bureaucracies.

The fact that the chief administrator is always subject to council control should in the long run prove to be one of the most valuable features of the plan. It is practically impossible to have in a city-manager city the recurrent contests between the council and the chief executive which are to be met with in so many strong-mayor cities. If there cannot be harmony and coöperation the city-manager must go, and often the sooner he goes the better. And because it has always such complete control over the manager the council will learn that it is better to give him and his administration a fairly free hand than to bind them down with a burdensome set of complicated regulations. The result should be a smoothness and a flexibility in administration not previously attained in American cities.

Because the city-manager plan is at present the most popular and the most promising experiment in American municipal organization we have given here a more complete account of the arguments in favor of it than we did in the case of the commission and strong-mayor types. At the same time we need to recognize that there are important arguments against the immediate adoption of this plan by American cities and that several of these arguments may have more than a temporary importance. We shall waste no time upon merely verbal attacks, such as the assertions that the plan is "autocratic," "undemocratic," "un-American," "destructive of party government," and so forth.

1. In the first place it must be said that as yet no adequate statistical evidence has been adduced to show that city-manager cities have done notably better than other cities in keeping down debts and tax

rates or in raising the standards of administration. Under the strict tax limitation laws of the state of Ohio, Dayton has in the past ten years done remarkably well in financial matters when compared with non-manager sister cities. She has at the same time cut the infant mortality rate in half, and has made excellent progress in public improvements. From other manager cities have come stray reports which tell in glowing terms of improvements provided, back-taxes collected, business methods introduced, and many other betterments made. Taken all together these recitals seem to have somewhat more body than did the early accounts fifteen years ago from the more sanguine of the commission-governed cities, but they are of much the same type and almost equally inconclusive. The truth is, as we have said before, that it is as yet humanly impossible to gather enough statistical data of enough different kinds about enough different cities to prove anything concerning the relative merits of any of the different forms of city government.

2. We read, however, that the city-manager plan fails to provide the people with adequate political leadership. On the one hand there is said to be grave danger, if the people are not permitted to elect their municipal chief executives, that they will become indifferent to municipal politics and will accept with but mild protests a benevolently oligarchical administration imposed on them from above. Now it is a surprising thing that cities in foreign lands where mayors are not elected have never been aware of this indifference to municipal politics on the part of voters who are permitted to elect only members of the council. Still more surprising is it that the same criticism was never seriously directed against the ordinary commission plan of city government where the commission designates one of its members to be mayor. Furthermore the argument totally ignores the fact that there are still many cities in the United States in which the mayor never has been a chief executive in any real sense, and others in which he has continued to be appointed by the council. In none of these cases is there any serious complaint of the lack of citizen interest or political leadership.

The argument proceeds upon the assumption that political leadership can be developed adequately only where the people directly elect their chief executives. Applied to the national field this argument would result in the conclusion that in England and France, where the people do not elect their chief executives, it has been impossible to develop political leadership, whereas in the United States our elected

chief executives have generally been great and able leaders. Applied in the municipal field the argument assumes that leadership can normally be found in the men who are put up for the office of mayor by the local party bosses, or in those who offer themselves for the place under a direct primary system. While we lack the data needed to make positive assertions on the subject, common observation tells us that neither of these conclusions is sound. Political availability, fair speech, the ability to meet all classes of people as equals, and other similar qualifications are generally of more importance to the candidate for mayor than is constructive leadership.

This is not to deny the oft-observed fact that American cities put much stress upon the election of their mayors. This stress is, indeed, far too great in some cases, for it seems to be no less in a city like Minneapolis, where the office of mayor is relatively unimportant, than in a city like Boston or Detroit where the office is one of great power. The point is that we must learn to distinguish between the manufactured sound and fury of an election, and the choice of actual leaders or the decision of important questions. Some of the most important election contests are settled by small votes and without great bluster. The temporary falling-off of the vote in city-manager cities demonstrates nothing of any consequence. The vote declines from time to time in all cities without regard to the form of government, and so little is known about the causes of non-voting that we must be wary of giving a single simple explanation.[10]

As to local political leadership it has been the writer's observation, which the reader may test out for himself, that in all cities where the mayor has not been given powers so broad as to make him a dominant local factor without regard to his personal qualifications, leadership has developed in the council strong enough not only to threaten but actually in many cases to defeat the mayor's programme, if he has one. The history of the mayor's office in the United States does not demonstrate the assumption that popular election of mayors has resulted in developing any great number of mayors who were actually strong leaders.

That the American people are accustomed to the popular election of mayors must be granted. Therefore the abolition of popular election

[10] The first scientific study of non-voting in the United States was conducted recently in the city of Chicago by Professors Merriam, Gosnell, and their associates. See Merriam and Gosnell, *Non-Voting, Causes and Methods of Control*, Chicago, 1924. See also Chapter IX, above.

may have the temporary effect of reducing the number of voters, although this has not been demonstrated. In case this be deemed unfortunate, it would be easy enough to provide even in the city-manager plan for popular election of the mayor with the understanding that he should be a member and president of the city council and titular head of the city, with a larger salary than the councilmen, but without other special powers. This would cause little harm and might do some good in focussing public attention upon the mayor and perhaps compelling him to assume more leadership in municipal business.

3. A more important objection to the city manager plan is that in practice it does not actually separate politics from administration. For one thing the council frequently chooses a local man of known political affiliations for the office of manager. When it does so it opens the door in some degree to the playing of politics in the administration. If in addition it dictates to the manager his principal appointments the public service is on the downward road toward political domination. A weak manager can be ruled by the council even in matters of administrative detail.

This brings us to a consideration of the type of councilmen chosen in city-manager cities, for the success of the manager plan depends fundamentally upon the people and upon the councilmen whom they select. We have already seen that the proponents of the commission plan were greatly disappointed when they found, after a few years of experience, that the men elected to city commissions were not a marked improvement over those previously elected to city councils. What may we expect under the city-manager plan? A mere change in the form of a city's government is not going to change the underlying economic and political interests which so frequently combine to rule our cities. Public utility interests and others will continue to pursue the old objectives in the accustomed way. Party organizations with their bosses and workers seeking places and spoils will not disband just because the city adopts the manager plan of government.

The parties will still in most cases control the council, and they probably will continue to elect men of about the same type as before unless other changes of importance are introduced with the city-manager plan. It is, of course, out of the question to discuss the complete abolition of councilmen's salaries. At the same time, however, they can with justice be made small, since councilmen need not give full time to their official duties under the city-manager plan. When the salary is $1,500 or more there are always some men who

seek the office as a means of livelihood. Such men should not be encouraged.

The method of election will also have some influence in determining the type of men elected. To retain the ward system of election by plurality vote is to invite trouble from the start. An at-large election will yield better results, both because of the wider scrutiny given to candidates and because an at-large election practically necessitates a reduction both in the size of the council and in the number to be elected at one time. A system of proportional representation which gives independent minorities the opportunity to elect a few men not bound to the party wheel may serve also to introduce a wholesome leaven of free discussion into the council meetings. In addition there must be strict charter regulations establishing the merit system of appointments, controlling the letting of contracts and the purchase of supplies, and in other respects limiting the spoils of office. Nothing is more discouraging to the spoils politician.

In spite of all that can be done, however, we should not expect to see great and immediate changes in the character of the membership of our city councils under the city-manager plan. The question still remains, then, whether they will not do better work under the new conditions established by a city-manager charter. A well-drafted charter of this type delivers a clear mandate to the city council and to its members to keep their hands off the administration. They must work through the manager. What they do toward dictating his appointments to him must be done furtively, despite which the facts will soon be known to the public. A single member of courage who objects to what is being done in this way can easily expose the violation of the charter, and thus bring public opinion to bear upon the question. The manager himself, if he is not an abject tool, may resist improper interferences, and when goaded beyond the point of endurance may resign and give the public a statement of his reasons; and if the voters have themselves adopted the city-manager plan after a campaign of education, the presumption is that a public opinion exists which it will be dangerous for councilmen to ignore. In the first flush of public interest after the adoption of the plan such a public opinion usually exists for a short time, but can it be made to last? This is the crux of the problem, for in the long run it is only the existence of such a public opinion which will make the manager plan fully effective.

In conclusion upon this point it may be said that up to the present time we have inadequate evidence to support the assertion either that

politics can or cannot be separated from the administration under the city-manager plan. There are a few glaring cases of failure such as that in Akron, and some other not so striking successes, but a few examples cannot be made the basis for sweeping generalization.

4. We come finally to the problem of the manager. When the new plan of government was launched a body of trained municipal business managers did not exist and there was no general agreement as to the qualifications which a city manager should have. Dayton selected a municipal engineer from Cincinnati, and for obvious reasons other cities also selected men with the training of engineers. Necessarily there was a period of experimentation. The salaries offered in numerous places were too small to be attractive. Many city councils failed to catch the spirit of the new plan and selected local residents without special qualifications. Some of these men were already in politics, and others could not refrain from political activity.

The results were exceedingly unfortunate, for although there were no outstanding scandals there was a failure to measure up to the possibilities of the plan. Whereas the proponents of city-manager government had hoped for almost permanent tenure on the part of managers, there was in fact a very rapid turnover. One small Southern city has the unenviable distinction of having had nine city-managers in as many years, while a continuous tenure of five years is a rare thing among managers. Some have been ousted for political activity, some for failure to coöperate with the council, and some for other reasons; a number have resigned to go into other lines of work, and a few have left one city to go to another in the same capacity. Verily, many are called but few are chosen for this new profession.[11]

The sifting process which has already eliminated so many men from the field seems bound to continue on an extensive scale for some time. The number of cities under the manager plan grows larger every year. Cities are simply compelled to find and to train their own managers. There is no training school in existence which is a generally recognized source of manager material. Furthermore city councils have not generally learned the desirability of getting an outside man for manager, nor of obtaining one with a specialized training. Indeed, special training alone is not sufficient, for experience is indispensable for successful administration. Consequently, from the point of view of

[11] See the interesting article on "City Managership as a Profession" by Joseph A. Cohen printed as a supplement to the *National Municipal Review*, July, 1924, Vol. XIII, pp. 389–412.

training and experience many men who are tried as city managers will continue to be a disappointment, and when the manager fails the plan itself fails for the time being.

But it is not only that many men are appointed who lack training and experience. Equally important are defects in temperament, in tact, and in ability to deal with men. If there have been cases where the council tried to interfere with the manager's work there have also been instances in which the manager has tried to rule the council and to bring pressure to bear upon it to compel it to follow his views on matters of policy. It is not every man who has the patience and the tact to wait for his views to become accepted when he sees how much could be accomplished by immediate action; nor is every city council capable of learning to follow expert advice even in time.

Then, too, many a manager has failed through no fault of his own. An intractable council, a suspicious people, a large burden of debt carried over from previous administrations, over-sanguine promises on the part of those who advocated the manager plan, a strong popular demand for numerous public improvements, a civil service honeycombed with political intrigue, political rings ready to find any and every pretext for an attack on the manager plan,—these and other obstacles have stood in the way of the manager. To these must be added the fact that the city-manager plan has been in its experimental stage in our cities during a period which began with a rapid increase in prices, wages, and taxes, and is now going through a process of deflation, unemployment, and general unsettlement. Under such conditions no plan of government could possibly have helped much to bring content to the people.

In spite of many difficulties, however, and notwithstanding the personal shortcomings of some individuals, city managers as a group have not failed. We have some evidence that points to the conclusion that they are really doing very well on the whole. They are not spectacular men; many of them do not even have unusual qualities of personal magnetism. Since, in addition, they often lack political backing in the community, they are compelled to win success by sheer ability. Nevertheless the city manager plan more than holds its own in the great majority of the cities which have adopted it, a fact which is in itself no mean tribute to the managers. Their one great difficulty seems to be their inability to hold office long enough in one place to achieve notable results.

The undesirable shortness of the tenure of many city managers

suggests the thought that the attempt to introduce the principle of indefinite tenure from the start may have been a mistake. In Germany excellent results have been obtained by giving the *Bürgermeister* and the members of the administrative council assured tenure for six or twelve years with the possibility of reappointment. School superintendents in large American cities are generally appointed for two, four, or even six years at a time. A city council might choose the manager with greater care if it had to give him a four or six year term, and on the other hand the manager could stay in office long enough to show definite results. To be effective such a provision for definite long tenure would have to be written into the charter.

The conclusion would seem to be that from the point of view of reason there is much to be said for the city-manager plan. The *a priori* arguments in its favor are more cogent than those against it, but of course, until more evidence is in, we cannot come to wholly reliable conclusions concerning it. Like any plan of government it is not automatic. No guarantee goes with it that every city adopting it will immediately get better government. It makes possible better administration, just as improved machinery makes possible a better product from any factory. But the workman must be conscientious. He must study his machine and use it as it was intended to be used. Even so, the people under a city-manager or any other plan of government must understand what the charter provides, both in letter and in spirit, and insist upon having it carried out accordingly. Popular knowledge and honesty are the basis of all good government. The city-manager plan calls for more integrity than earlier plans of organization because it attempts to eliminate all spoils and private favors from the administration. It calls for popular education in greater measure than before because it asks the people to forget many old prejudices against the expert in government.

REFERENCES

So much has been written on the forms of city government in the United States that it would be quite impossible to make a critical evaluation of all the useful writings on the subject in the small space allotted here. We give instead a list of books under several topic headings. The historical development of the different forms is generally woven into the analytical discussions. To the historical works cited in the footnotes to Ch. XII should be added the numerous books cited by Professor Munro in his *Bibliography of Municipal Government*, pp. 3–13.

General works: Fairlie, *Municipal Administration*, 1901, Chs. V, XVII,

XVIII, XIX, XX; Munro, *Municipal Government and Administration*, 1923, Chs. V, XVIII–XXII; Capes, *The Modern City and its Government*, 1922, Chs. VIII–XI; Maxey, *An Outline of Municipal Government*, 1924, Ch. III; Anderson, *City Charter Making in Minnesota*, 1922, Chs. III, V.

Commission plan: American Academy of Political and Social Science, *Commission Government and the City-Manager Plan*, 1914; Beard, *A Loose-Leaf Digest of Short Ballot Charters*, 1911; Beman, *Current Problems in Municipal Government*, 1923; Bradford, *Commission Government in American Cities*, 1915; Bruère, *The New City Government*, 1916; Chang, *History and Analysis of the Commission and City-Manager Plans of Municipal Government*, 1918; Woodruff (editor), *City Government by Commission*, 1911.

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CHAPTER XIV

THE CITY COUNCIL

I. Position and Membership

THE POSITION OF THE COUNCIL

In the constitution of every self-governing American municipality there is a representative and deliberative body which we call for short the city council. Its legal title varies from place to place. Anciently it was usually called the "court of common council," but in present day America it may be either the "common council," the "municipal assembly," the "commission," or more commonly simply "the council."

At various times both here and in England the position of the city council has been threatened. It has been divided into several chambers. Specific powers have been taken from it and important checks put upon it. Other bodies have arisen which threatened to take over its principal functions, such as the boards of estimate and apportionment in various cities in New York and elsewhere. Whenever this has happened, however, either the council has reasserted itself or else the new body has itself in fact become the council.

For when all is said and done, there is a deliberative function in municipal government which is essential to its existence; and if a city of large size is to be self-governing it can act in most matters only through an elected, representative body. A conquered city or one without a voice in its own government may be administered by a military dictator, or by an appointed commission, as in the case of Washington, D. C. A mere village or a township may perform its business in town meeting, all the inhabitants being present. But every community which is a city in more than name needs a representative council, elected by the members of the corporation, to control its many affairs. The story of the city council is, therefore, the central theme in the history of municipal government. Its ups and its downs, its changing composition, its reorganization from time to time, its gaining and losing of power, and the evolution of its functions, are the very stuff of municipal history.

We need not here repeat the history of municipal government

given briefly in another chapter.[1] It is important, however, to note how different is the position of the council at present under different forms of city government. In reaching conclusions upon this point we need to keep in mind four important criteria: 1, The extent of the mayor's veto power, if he has such power; 2, The financial powers of the council and of the mayor; 3, The appointing power with its resultant control over administration; and 4, The extent to which local functions have been transferred to independent boards and other authorities. Nothing is said here of the ordinance making power, for that in nearly every case is left to the council.

1. The council has reached its position of least power in cities under the independent executive or strong-mayor plan of government, and in those which have powerful boards of estimate and apportionment. Under the former plan of organization the mayor has an extensive veto power, he is generally empowered to prepare and to present the annual budget, and he makes all important appointments to administrative positions. It is true that the council may generally pass measures over his veto and that in some cases it may approve or disapprove his appointments, but the tendency in such plans of government has been to strengthen the mayor and to make him independent of council control. In cities which have boards of estimate separate from the council for the control of the city's finances, and in which the council is subject also to the mayor's veto power and without the power of appointment, the council has reached a place where it has relatively little left to do but to pass local by-laws. Its control over the administration is seriously diminished. Such in effect is the position of the New York city board of aldermen.

2. Somewhat better off, but by no means completely dominant in local affairs are the councils in such cities as Chicago and Minneapolis with their disintegrated forms of government. While in these places the council is subject to the mayor's veto power, and while in Chicago it has no important appointing power, although it approves the mayor's appointments, its principal weakness seems to be that its functions have been kept within narrow limits by the creation of numerous separate boards and officers for the control of parks, sanitation, libraries, and other services. Within the range of functions remaining, however, city councils in such cities exercise a considerable financial authority and power of directing the administration.

3. In cities under commission government, and under the city

[1] See ch. XII.

manager plan, the council (or commission) is normally the undisputed head of the entire government. The mayor has no veto power over the acts of the council in the passage either of ordinances or of the budget, the principal appointments are made by the council, and the control and direction of practically all the local services are vested in its hands. Although between these two plans there are important differences in the mode of exercising powers, yet in each the supremacy of the council is practically assured.

AS TO THE NUMBER OF MEMBERS

The size of a city council in the United States has little or no relationship either to the size of the city or to the importance of the council's work. The city of Newport, Rhode Island, with 30,255 inhabitants, has under its 1906 charter a "representative council" of 195 members. The powers of this body are essentially legislative, for the mayor and a board of five aldermen are jointly vested with the executive power. In Buffalo, on the other hand, a city of over a half million people, all the powers of the municipal government, legislative and executive, are vested in a commission of five men, one of whom is the mayor.

The case of Newport is probably not unique. It would appear that this community, like others in New England, having existed for a long time under a town form of government finally reached a size which made town meetings no longer feasible. Being unwilling to plunge immediately to the other extreme of abolishing town meetings and establishing a small representative council, it procured a charter which was a compromise between the two. The representative council is really a sort of representative town meeting, much larger than a council.

The typical American city council, if there is such, is a small body. It is more like a committee than a representative assembly, although many are too large to act as committees. True it is that in the past a number of cities had large councils, and that even to-day a number of well-known cities have sizable assemblies. Even before 1900 a movement had begun, however, to reduce councils to more compact and wieldy bodies, and this tendency has been strengthened by movements for the short ballot, for commission government, and for city-manager government. Chicago, Philadelphia, Detroit, Boston, Seattle, Portland (Oregon), St. Paul, and a number of other cities large and small

to-day have city councils which are considerably smaller than those they had fifteen years ago. Chicago has reduced its council from 70 members to 50, Philadelphia has made a more drastic reduction from a two-chambered council of 145 members to a single-chambered body of about 20 members, and so the story goes in other places. Almost everywhere there is evidence of a turning away from the large and clumsy bodies of a few decades ago.

Among the cities of the country having over 500,000 population New York has the largest council with 73 members in the Board of Aldermen, and 8 in the Board of Estimate and Taxation, which is for many purposes really a second and more important chamber of the council. All the other cities in this group now have single-chambered councils, ranging in size as follows: Chicago, 50; St. Louis, 29; Cleveland, 25; Philadelphia, 20 (since 1923); Baltimore, 19; San Francisco, 18; Detroit, Boston, Pittsburgh, and Los Angeles, 9 each; and Buffalo, under a commission plan of government, only 5.

Among cities of from 200,000 to 500,000 population, as will be observed from the table on pages 352–3, only five have councils of 30 members or more, namely, Cincinnati (32), Kansas City (32 in two chambers), Providence (50 in two chambers), Louisville (36 in two chambers), and Atlanta (30 in two chambers). A small number of others have from 20 to 30, but the great majority of city councils in cities of over 200,000 population have less than 20 members.[1a]

Along with the tendency toward smaller city councils has gone a movement to eliminate the bicameral organization. This principle of council organization appears to have been introduced originally in more or less conscious imitation of the federal and state governments. Once initiated in a few places the bicameral system spread to a large number of cities. The Virginia constitution of 1902 went so far as to require city councils in that state to be composed of two branches.[2] Arguments were constructed for retaining this division of the council on the grounds that it provided one small body for administrative work and the approval of appointments, that it made possible ward representation in one body and city-wide representation in the other, that it compelled the council to give due consideration to all measures, and that it gave increased protection to the taxpayer. In the end,

[1a] Since these statements were written in 1924, Boston and Los Angeles have reverted to the ward system with enlarged councils, but Cincinnati and Kansas City in adopting the city-manager plan have provided for smaller councils.

[2] Sec. 121.

however, the demands for a more simple and responsible municipal organization became too insistent to be ignored. A small number of cities in a few eastern and southern states where habit and tradition rule with a heavy hand still retain two-chambered councils, but elsewhere such bodies are considered mere anachronisms with no present reason for being.

When we attempt to reach a conclusion as to the ideal size of a municipal council, we must weigh in the balance a number of different considerations. Among these are (1) the need of representing all important elements in the city, (2) the character and ability of the men and women likely to be chosen, (3) the nature of the business to be done, (4) the effect of size on the method of procedure, and (5) the simplicity and visibility of the body in action.

Probably there will always be some public dissatisfaction with the work done by city councils, but it is certain that this dissatisfaction will be accentuated if the council does not include representatives of all important elements in the city. To avoid as far as possible the public distrust and suspicion which result from lack of representation in it, a council should be made as representative as possible consistent with other requirements. Persons who have given little thought to the matter frequently propose, therefore, the creation of large assemblies so that every little patch of the city's area or every little group of voters may have its delegate present.

Such a proposal if carried out leads directly to other evils. The ward system of election becomes then almost indispensable, and this is usually accompanied by the requirement of residence in the ward. Because the city does not contain enough men of outstanding ability who will run for the council and thus fill all the places, and because places in a large council are to them unattractive, men of less ability and more doubtful character will press forward. To them the places they fill will seem important, but in fact when there are a hundred or more councilmen each one is by himself insignificant and inconspicuous. Thus the effect of making a city council very large is not to represent the best thought, ability, and character of the community, which is the desired result, but to give undue representation to the seamy side of the city's life. By reducing the council in size, and thus making each place therein more important and more conspicuous, something may be done to attract abler men into the race, to compel parties to put forward men of known probity, and to induce the voters to make their selections with more care. At best it is not going to be possible

to make a city council a perfect thing, but to make it a very large body is to invite deterioration.

If the Rhode Island legislature were to abolish the "representative council" of Newport with its 195 members, and vest all the powers of the local government in the mayor and the five aldermen, the city would probably find itself adequately represented and fully as well governed. Indeed any city of 25,000 to 50,000 population would probably find in the long run that a council of from five to nine members would adequately serve its needs. Considering the importance of the business to be done and the difficulty of finding much good aldermanic timber, a larger body is hardly desirable.

On the other hand, larger cities cannot afford to increase their councils in proportion to population. If Newport had six members in her council, every 5,000 inhabitants might have a representative, but if every 5,000 people in New York or Chicago were to have a representative in the city council, those bodies would consist of about 1100 and 550 members respectively. Larger cities must to some extent sacrifice completeness of representation to efficiency of procedure, or quantity to quality.

The character of the business to be done should be one of the determining factors. The main work of a city council in a large city is to control and direct a huge administrative organization consisting of thousands of employees. It participates in the management of a large business, in the carrying on of extensive public works. For such affairs a small body is needed which can act quickly and informally, without the intermediation of committees and without long-winded debates. As the size of legislative bodies increases, a point is soon reached where informal procedure around a single large table becomes impossible, and where formal rules governing debate and procedure become a necessity. Then it is that we hear the long orations delivered to the galleries or to the member's constituents. Then, too, do we find the introduction of filibustering and all sorts of obstructive and dilatory tactics.

When this point is reached other factors also begin to affect the situation. Although psychologists have not fully explained it, everyone recognizes that there are fundamental differences between large and small bodies both in their attitude toward public business and in their methods. A small body acts usually more humbly and more open-mindedly. It often feels the need of expert advice and is willing to follow it. Responsibility makes it less confident of its own knowl-

edge and power. A large body of representatives, on the other hand, though its average of ability is probably lower, is more confident of its ability to do everything itself. It usually includes a number of men who feel no genuine sense of responsibility, who are willing to substitute their amateur opinions for those of men who know, and who insist upon prying into every detail of the public business. Where each man really counts for but little each seems to get an exaggerated opinion of his importance and a diminished sense of immediate accountability. Parties are organized to strengthen the individual. Partyism and partisan bickerings become the order of the day. As parties in large bodies men will sometimes do things for which they would hardly dare to assume responsibility as individuals in smaller bodies.

Dividing themselves into numerous committees, large representative bodies proceed to meddle in every department of public work. Let them but be paid enough so that they can afford to give much or all of their time to the public business and there will be almost no limit to their activities. Nothing then is too small to engage their attention. Nothing will they intrust to the administrative officers. They must pass upon the payment of every little bill, upon every request for a petty local improvement, upon every salary increase. In thus acting they violate a fundamental principle of administration which has been laid down time and again, that "the legislature should not concern itself with administrative details." [3] This is an axiom which city councils, and especially large, paid city councils, find it exceedingly hard to learn.

For the reasons which have been given it seems logical to conclude that small councils will do better than large ones in handling municipal business. The commission plan practically requires a small council. If the author's views be sound, the city-manager plan too will be most successful where the council is kept small enough to meet informally as a committee. The writer can picture a manager working harmoniously with a council of from five to a dozen men, but not with twenty-five or thirty unless he and they be men of unusual intelligence and ability.[4] A few men can probably be led to apply themselves to nothing but the big problems, and to take expert advice on all details, but this will not be so true of a large body.

[3] Horace E. Deming, in *A Municipal Program*, National Municipal League, 1900, p. 43; Mill, *Representative Government*, Ch. V.

[4] From this point of view the present city-manager charter of Cleveland, with its council of 25 members, is an interesting experiment.

Another striking advantage inherent in small councils is their visibility. The people generally can know five or ten men by reputation or by their works, where they would lose sight of the course of business and of even the responsible persons in a much larger body. If it be objected that knowledge of what is being done is of no value, since the smaller number cannot fully represent the voters nor the voters control them, it may be answered that other devices can be used to ensure adequate representation and responsibility. The members of a small council may be elected at large under some sytem of proportional representation which will ensure some representation to all major groups. Furthermore the voters may be given the power of recall, the right to protest against measures enacted, the right of referendum, and the power to initiate and vote upon measures of their own. With these instruments of popular control at hand the voters are not likely to find themselves either wholly unrepresented or entirely without recourse when things go wrong.

But it is important, even at the risk of seeming tedious, to repeat that the essential question is, Will a small or a large council be the more likely to attract able, intelligent men? The student will be under no serious illusions upon this point. The number of truly successful professional men or men of large business who seek election to American city councils is small and is likely to remain small for some time. Service in the city council is not the first rung in the ladder of political success. Few men who attempt it ever rise above such service. Council positions, especially when they carry regular salaries, appeal to mechanics, janitors, teamsters, truck drivers, keepers of restaurants, billiard parlors, and small shops, to party workers and men of no regular occupation, and to those who are picking up a precarious living by selling insurance or real estate, or by rendering legal or other professional services.[5] Every city council usually includes some excellent characters and some men of high educational attainments, as well as an

[5] "An Haberdassher and a Carpenter,
A Webbe, a Dyere, and Tapicer,
Were with us eek, clothed in o liveree,
Of a solempne and greet fraternitee. . . .

Wel seemed ech of hem a fair burgeys,
To sitten in a yeldhalle on a deys.
Everich, for the wisdom that he can,
Was shaply for to been an alderman."
Chaucer, *The Canterbury Tales, Prologue.*

occasional prominent business man from a wealthy ward; but on the whole a council represents primarily the great mass of the only moderately well-to-do and the relatively unsuccessful. American municipal politics to-day make little personal appeal to other classes.

This being the case, much depends upon the skill with which the voter can make his selections from among those who offer themselves. If the council be small, elections may be at large or from large districts. There will be fewer candidates, and more publicity as to the career and character of each one. A few more able men will be attracted into the race than in case a large council were to be elected by wards. Therefore, while there is no statistical proof of this point, it is common opinion, based partly upon reason and partly upon observation, that small councils will generally get men of relatively higher average ability than is the case with large councils. If the work of councils could be limited to their proper functions of legislation and control, so that a man would not need to give full time to the office, it would perhaps be possible to induce even more busy and able people to seek places as aldermen.

TERMS AND SALARIES OF COUNCILMEN

In the colonial boroughs aldermen and councilmen usually held office for one year, although there were several cases of life tenure especially in the close corporations. Very long terms appear to have been abolished everywhere in the United States, and in recent years there has been a tendency to abolish the one-year tenure also. Councilmen to-day usually serve for two years, but in several states and in a number of large cities three and four year terms have become standard.[6]

Along with the tendency to lengthen the terms of councilmen there has come from other sources the demand that councilmen be given salaries. Nothing is a more typical expression of the democratic movement of the nineteenth century than the insistence that public officers be paid. On the one hand the party leaders undoubtedly desired to have more offices at their disposal with salaries attached in order the better to reward their henchmen and to make more certain the payment of party assessments. More fundamental than this factor, however, was the demand of the newly-enfranchised masses of no property and small incomes that the government be made truly democratic by having office-holding made possible for them. Why

[6] See Bureau of the Census, *General Statistics of Cities*, 1915, Table I, pp. 50–7.

should only the well-to-do be permitted to hold office? To the democracy of earlier days and to the laboring class of to-day such a thought was and is entirely obnoxious. It violates the idea of the equality of men. If only the laboring man can adequately represent the laboring man, and if the office is to take any considerable part of a man's time, then a salary must accompany the office or the government will not be giving equal opportunity to all classes.

Not everywhere are salaries paid for council service, yet in the larger cities it is very rare to find unpaid city councils, and even in small places it is common to find a nominal salary paid. The effect has been, naturally, to draw into the city council a number of representatives from elements which formerly had no direct voice in city affairs. On the other hand, elective school, park, and library boards, where they exist, are commonly unpaid. Partly for this reason, and partly because of the different character of the work of these boards, there is generally a marked difference to be observed between the composition of the city council and that of the unpaid local boards. The latter represent more fully, although seldom perfectly, the more conservative and well-to-do elements in the community.

The facts thus briefly stated have given rise to proposals, emanating usually from the well-to-do classes, that city councils also be returned to the unpaid basis. It is frequently said in reply that such a change is now politically impossible. The writer is unable to concur in the view that the proposed change is impossible if desirable. It is doubtful, however, whether the change would be really all for the good. If the abolition of salaries had the effect of compelling the aldermen to intrust more of the administrative details to permanent administrative officers, all classes in the city might well give thanks. It would be more likely, however, to compel the more honest representatives of the laboring class to withdraw from the council, and to compel all other non-wealthy members of that body to resort to other means to eke out their incomes. Despite all that is said in criticism of them, the working classes in every city have something to contribute to council deliberations which it would be unfortunate to lose. Then too the sense of injustice which would result from virtually excluding them from council membership, if that resulted, could not in the long run have salutary results. But the immediate consequence of having the councilmen seek other and perhaps illegitimate sources of income would also be unfortunate. For these reasons the improvement of the city council is not likely to come through the abolition of salaries.

THE ELECTION OF COUNCILMEN

The election of councilmen by wards appears to have been introduced into this country by the Dongan charters to New York and Albany in 1686. In the other colonial boroughs the system of election-at-large was used. At no time in our history has either of these systems entirely ousted the other. Throughout the nineteenth century the system of ward elections appears to have had its greatest vogue, whereas in recent years under the commission and city-manager plans of government, and also in a number of strong-mayor cities there has been a decisive swing in the direction of election-at-large. At the present time, although we lack precise statistics, it is safe to say that only a few commission-governed cities and less than fifteen under the city-manager plan elect members of the council by wards. On the other hand it appears that a majority of the cities under other plans of organization elect some or all of the councilmen in that way.

Here as in other cases we have to deal with a great variety of methods. The privilege of local experimentation appears to have been given almost unlimited scope in the matter of council elections. Among the various methods of electing councilmen to be found in America to-day the following are probably of most importance:

A. Election by the usual system of voting; votes non-transferable; plurality rule.

1. Nomination and election by wards of entire council.
2. Nomination and election at large of entire council.
3. Nomination and election of a majority of the council by wards and of a minority at large.
4. Nomination by wards, election at large (St. Louis and some other places).

B. Election by the Bucklin system of preferential voting of the entire council at large.

C. Election by the Hare system of the single transferable vote of the entire council at large (Boulder, Colorado, and Ashtabula, Ohio) *or by large districts* (Cleveland, Ohio).

The ward system. While there are cases of the election of several aldermen from a ward, the general rule is to have only one elected at a time. In case each ward has but one alderman, then the council is usually completely renewed at each election. Otherwise there may be overlapping of terms and only partial renewal from time to time. No rule can be given as to the size of wards, nor as to relative populations.

SIZE, TERM, AND METHODS OF ELECTION OF CITY COUNCILS IN THE UNITED STATES—1924*

Name of city	*Population, 1920*	*Number of members of council or of lower chamber*	*Term in years*	*Method of election*
New York [1]	5,620,048	73	2	67 by wards; 5 by boroughs; 1 at large
Chicago	2,701,705	50	4	By wards; regular and supplementary election system
Philadelphia	1,823,779	20 (1923)	4	By senatorial districts
Detroit	993,678	9	2	At large
Cleveland	796,841	25	2	Hare system of voting; 4 districts
St. Louis	772,897	29	4	At large, one from each district
Boston	748,060	9	3	At large
Baltimore	733,826	19	3	3 from each of 6 wards 1 at large
Pittsburgh	588,343	9	4	At large
Los Angeles	576,673	11	2	At large
Buffalo	506,775	5	4	At large; commission plan
San Francisco	506,676	18	4	At large
Milwaukee	457,147	25	4	25 by wards
Washington [2]	437,571			
Newark	414,524	5	4	At large; commission plan
Cincinnati	401,247	32	2	26 by wards; 6 at large
New Orleans	387,219	5	4	At large; commission plan
Minneapolis	380,582	26	4	2 from each of 13 wards
Kansas City, Mo.[3]	324,410	16	2	By wards
Seattle	315,312	9	3	At large

* NOTE. Since this table was compiled in 1924, decisions have been made to return both Boston and Los Angeles to the ward system. The Boston council will probably be considerably enlarged; the Los Angeles body increases from 11 to 15 members. On the other hand, Cincinnati and Kansas City have recently adopted city manager charters, the former reducing its council from 32 members to 9, to be elected at large by the Hare system, and the latter providing for a single instead of a double-chambered council.

SIZE, TERM, AND METHODS OF ELECTION OF CITY COUNCILS IN THE UNITED STATES—1924—*Continued*

Name of city	*Population, 1920*	*Number of members of council or of lower chamber*	*Term in years*	*Method of election*
Indianapolis	314,194	9	4	1 or 2 from each of 6 wards
Jersey City	298,103	5	4	At large; commission plan
Rochester, N. Y.	295,750	24	2	By wards
Portland, Ore	258,288	5	4	At large; preferential ballot; commiss'n plan
Denver	256,491	9	2	By wards
Toledo	243,164	20	2	By wards
Providence [4]	237,595	40	2	4 from each of 10 wards
Columbus, O.	237,031	7	4	At large
Louisville [5]	234,891	24	2	2 from each of 12 wards
St. Paul	234,698	7	2	At large; commission plan
Oakland	216,261	5	4	At large; commission plan
Akron	208,435	9	4	At large
Atlanta [6]	200,616	20	2	2 from each of 10 wards

In New York the wards average upwards of 85,000 population, in Chicago about 54,000, in St. Louis and in Minneapolis nearly 30,000,

[1] New York has also a board of estimate and apportionment which is in some respects a separate chamber of the council.

[2] Strictly speaking Washington, D. C., does not have a city council. It is governed by Congress, which passes the important local measures, and which delegates administrative powers and minor police powers to an appointed commission of three members.

[3] In Kansas City there is also an upper chamber called the "upper house" which consists of 16 members elected at large, eight every two years for four-year terms.

[4] Providence has also an upper house called the board of aldermen composed of ten members elected by wards biennially.

[5] In Louisville there is also an upper house, called the board of aldermen, consisting of twelve members elected at large all at one time for two-year terms.

[6] Atlanta has also a board of aldermen of ten members, some of whom are elected at large each year for three-year terms.

and in small cities usually very much less, even down to a few hundred souls. Whatever generalization we attempt, therefore, cannot apply with equal force to all cities.

The election of councilmen by wards under normal conditions has certain obvious advantages. First, it gives the voter as to the council election a short and simple ballot. Second, it gives him the opportunity of selecting someone living near him about whom it should be possible to get some information. Third, in so far as the wards have peculiar and special interests, it provides means for their representation in the council.

The American people have in recent years been inclined to give more weight to the arguments against the ward system than to those in its favor. Residence within the ward has come to be almost everywhere a prerequisite to election from the ward. Considering the manner in which people in cities draw themselves apart from each other for residence purposes, it is not surprising that some wards are left without adequate aldermanic material. Even the labor leaders may chance to be grouped all in one ward and some of them may be in wards where they have no chance of election. The result is often a narrow restriction of the range of choice, and the election to the council from some wards of men not up to the general standard. Furthermore the basis upon which selection is made within the ward tends to be that of service to the ward instead of ability to serve the city. A ward alderman is expected to get something for his ward,—some street improvement, or a public building, or at least work and help for needy constituents. If he must indulge in log-rolling to get results, his action will be condoned by his constituents, whereas to come home with "clean but empty hands" is considered a proof of weakness in aldermen as well as in ambassadors. It scarcely needs to be said that the men who will engage in such a scramble for spoils and ward improvements are a distinctive type whose presence in the council in large numbers is almost certain to give it a low moral tone.

The ward system gives very unequal results in the matter of representation. If the city be gerrymandered, and it is likely to be, then one of the parties is reasonably sure to be under-represented or at least to feel that it is. Even where the original ward lines are made carefully and honestly, the rapid shifting and growth of population in American cities soon upsets the entire division of representation. Once established, however, and even when there was little reason for them in the first instance, ward lines tend to become fixed, almost un-

changeable. It is not uncommon, therefore, to find cases of minority rule continued for years and even decades.

Other defects can easily be found. Ward lines are not, as a rule, the natural boundaries of distinct geographical areas or social groups, but rather artificial or merely traditional limits. The aldermen elected from them are never responsible to the city as a whole. Certain groups which have respectable numbers but not enough to carry any ward may find themselves wholly unrepresented or very poorly represented by some fusion candidate. Indeed under the ordinary American system of voting, even if the wards are all practically equal in population, the ward system of election may result in anything from absolute dominance of the council by a plurality party to a fair apportionment of representation among all groups and parties. To control the council a party needs only to carry a majority of the wards, and this it may do by a bare majority or plurality in each ward as the case may be.

Let us suppose a simple case of five wards, substantially equal, and only two parties, one of which is, however, handicapped by having a concentration of its voting power in one ward, which is not an uncommon case.[7]

	Ward 1	*Ward 2*	*Ward 3*	*Ward 4*	*Ward 5*
Liberal Vote.....	6,200	6,300	6,500	6,400	3,000
Conservative Vote.	5,800	5,700	5,500	5,600	9,000
Alderman Elected..	Liberal	Liberal	Liberal	Liberal	Conservative

Total vote, both parties, 60,000.....(100%)
Total Liberal vote, 28,400.....(47⅓%)
Total Conservative vote, 31,600.....(52⅔%)
Liberals in council number 4, or 80% of total.
Conservatives in council number 1, or 20% of total.
7,100 votes elected each Liberal; 31,600 votes were required to elect one Conservative.

The illustration here given may be considered an extreme case, but it is not to be supposed that such cases are entirely imaginary. In the city of Minneapolis in recent years the voters have divided normally into a Conservative party and a Radical or Progressive party. The former party has had normally from 52 to 56 per cent of the voters in

[7] For social and business reasons, a great many people of means in American cities tend to settle in particular sections of the city where living expenses are so high that very few laboring men can afford to live there. Thus the conservative elements find that much of their strength is wasted by being concentrated in a few wards.

its ranks. In the election of June, 1923, however, while the Conservatives carried every important post to be filled by election at large, the Radical or Progressive party won enough ward elections to get a majority in the city council of 14 to 12. The present boards elected at large are not only predominantly but in two cases exclusively made up of Conservatives, yet the council is dominated by the opposite party.

Election at large. By the election of councilmen at large a city gains certain obvious advantages. Ward boundaries are for all practical purposes wiped out. Gerrymandering becomes impossible. The parties may put forward their best men, no matter where they live in the city. Being elected from and responsible to the city as a whole, the councilmen must put more stress upon general city-wide problems both in the campaign and in office than upon the special needs of little districts. Furthermore, when elected at large the council practically must be a small body. There is reason to believe, therefore, that somewhat abler men will be chosen.

At the same time it is very easy to find objections, more or less valid, to the system of at-large election. The less fortunate classes feel that this system deprives them of direct representation. A city-wide campaign is expensive, and the victory is likely to go to that party which has the best organization and the longest purse. The independent candidate has little chance of election.[8] These objections are, of course, more important in large cities than in small. The fear that the councilmen elected will all come from one district is also frequently expressed, but seems to have very little foundation in fact. The party organization which expects victory is seldom so unwise as to present a slate of candidates drawn from only one section of the city.

The fundamental objection to election at large is that it frequently deprives the smaller parties of all representation. The ideal representative body undoubtedly is one in which the majority rules and the minority has adequate representation. While party leaders sometimes desire complete control and the elimination of minority criticism, the public usually fares better when there is a strong opposition party in the council. Under the system of at-large election, however, a well-

[8] But it is not necessarily correct to say that election-at-large puts the laboring man under a financial handicap, for if labor is well organized politically it can conduct its campaign effectively and yet more cheaply than the opposition. The important point is to have an organization.

disciplined majority or plurality party may carry off every place. In fact this is frequently the outcome in the case of both boards and councils elected at large.[9] A minority party may get representation by "plumping" its votes for only a few candidates, but this is possible only with good organization and at times when the majority party is poorly prepared.[10]

Preferential voting. The Bucklin system of preferential voting was not designed especially for the election of city councils. In fact the results of this voting method have not been wholly satisfactory, and its effect upon city councils has not been particularly notable. Hence, although it is used in a number of places for council elections it is not necessary to discuss it here again.[11]

Proportional representation. The Hare system of balloting by single transferable votes would seem to be of far greater importance, although it is not yet extensively employed in this country. This system aims directly to overcome the defects of both the ordinary ward system and the ordinary at-large system of electing city coun-

[9] In the illustration given above in the discussion of election by wards, a change to election at large might result in giving the conservatives all five members.

[10] Suppose a case where five councilmen are to be elected at large, on a non-partisan ballot, from ten candidates representing two parties whose relative voting strength is 6,500 and 5,500. With five places to be filled, each voter may ordinarily vote for five. If five of the candidates are Liberals and five Conservatives, and if no special instructions are issued by the party leaders, the 6,500 Liberals will probably vote for their candidates A, B, C, D, and E, and the 5,500 Conservatives for their candidates V, W, X, Y, and Z. In this case the Liberals win every place, and they would do so even if there were a third party which cast several thousand votes for its own slate. But suppose the nominations are made at a non-partisan primary (a common method) and that the Conservatives, realizing their weakness in numbers, so carefully plan their campaign as to put up only three candidates, X, Y, Z, and instruct their voters to vote for them and for no others. These three will undoubtedly be nominated, and along with them after the primaries will probably be seven Liberals, A, B, C, D, E, F, and G. If the Liberal party does not then immediately provide for eliminating two of its candidates, the Conservatives with a smaller number of voters may actually win three out of the five places by voting their entire strength for their three candidates and failing to vote for the fourth and fifth positions. While X, Y, and Z get approximately 5,500 votes each, the five times 6,500 votes of the Liberals, or 32,500 votes in all, will be scattered unevenly among the seven Liberal candidates, who will have an average of about 4,642 votes each. The figures may run something like this: A, 6,500; B, 6,000; C, 5,600; D, 5,200; E, 3,200; F, 3,000; G, 3,000. At least two Liberals will be elected, and five may be, but the chances of the Conservatives winning one, two, or even three places are fairly good.

[11] See Chapter X.

cils, school boards, county commissions, and all other representative bodies. It is designed to give majority rule and at the same time to ensure proportionate representation to minorities.

The ideal of the proportional representationists is that of ensuring as far as possible that every voter shall have one representative of his views in the council. The perfect arrangement would be something like this: If there were 5,000 voters in the community and five councilmen to be elected, each 1,000 voters who could unanimously agree upon one representative would be entitled to one. Such perfection is, of course, out of the question, but the Hare system of voting is designed to approach this result as closely as possible.

In order to bring about adequate representation of all large groups five or more councilmen should be elected from one district under the Hare system. Thus a small council would have all its members elected at large, but in a city which desires a larger council, a few great natural districts of the city may be used as election districts. In Cleveland, for example, twenty-five councilmen are elected from four districts, each electing from five to seven members according to population. Of course if a city were willing to have its councilmen serve for overlapping terms, even a large council might be elected at large, one-half or less at a time.

There is no need of a primary election in the Hare system of balloting. If it is desirable to have some restriction of the number of candidates this can be accomplished by requiring that each candidate's filing be accompanied by a petition of a few hundred voters, or more or less. The ballots are printed without party designations, the names of the candidates being printed in one column, alphabetically or by rotation. Opposite each name at the left is a square in which the voter indicates his choices, using the figure 1 for his first choice, 2 for his second choice, and so on to as many choices as he really cares to express.

When the voting for the day is at an end the judges of election in each precinct sort out all the ballots according to the first choices expressed thereon, putting A's first choice ballots in one pile, B's in another, and so on, and all spoiled ballots in a separate packet. The first choice results are then recorded and thereupon this record and all the ballots are returned under seal to the central counting place.

At the central counting place all the precinct results are checked and the count is completed by a staff of special clerks in the presence of all the candidates who care to be present and as many of their friends and

TYPE OF BALLOT USED FOR THE HARE SYSTEM OF VOTING

FOR THE COUNCIL

DIRECTIONS TO VOTERS:

Put the figure 1 opposite the name of your first choice. If you want to express also second, third, and other choices, do so by putting the figure 2 opposite the name of your second choice, the figure 3 opposite the name of your third choice, and so on. You may express thus as many choices as you please. *The more choices you express, the surer you are to make your ballot count for one of the candidates you favor.*

This ballot will not be counted for your second choice unless it is found that it cannot help your first; it will not be counted for your third choice unless it is found that it cannot help either your first or second, etc.

A ballot is spoiled if the figure 1 is put opposite more than one name. If you spoil this ballot, tear it across once, return it to the election officer in charge of the ballots, and get another from him.

CANDIDATES

	WILLIAM E. BORAH
	CALVIN COOLIDGE
	JOHN W. DAVIS
	CHARLES G. DAWES
	W. Z. FOSTER
	CHARLES E. HUGHES
	ROBERT M. LA FOLLETTE
	W. G. McADOO
	ALFRED E. SMITH
	BURTON K. WHEELER

of the general public as can be accommodated. The first thing to do is to determine the total number of valid ballots cast, and for this purpose every ballot not otherwise invalidated is considered valid if a first choice can reasonably be ascertained from it. When the total number of good ballots is known it is possible to determine the "quota," which is the number of votes required to elect a member. If only one place were to be filled the quota would be a true majority, which is determined in the following manner:

Number of places to be filled = 1.
1 plus 1 = 2, the divisor.
Total number of valid ballots = 12,000, the dividend.
This number divided by 2 = 6,000, the quotient.
6,000 plus 1 = 6,001, the true majority or quota.

One candidate can get 6,001 votes out of 12,000, but two cannot. Hence in this case 6,001 is a bare majority, the smallest number of votes which should elect a man.

When a number of places are to be filled under the Hare system of voting the same method is used for determining the quota. Thus:

Number of places to be filled = 5.
5 plus 1 = 6.
Total number of valid ballots = 12,000.
This number divided by 6 = 2,000.
2,000 plus 1 = 2,001, the quota.

It is clear that five candidates could get 2,001 votes each, and that any sixth candidate would have to fall short of this number and thus fail to be elected. In any case less than a quota of people would be unrepresented, whereas under our ordinary voting system by wards or at large it is conceivable that the minority may sometimes rule almost to the exclusion of the majority.

The purpose of the count is then to give legal force to the choices expressed by the voters in their proper order, and to determine which five candidates have quotas or come nearest thereto, where five are to be elected. These will be the candidates who have behind them "unanimous consent constituencies" of the right size to entitle them to election. The counting appears to be difficult but is really quite simple for it follows exactly the choices expressed by the voters themselves.

Suppose the case above of a district or city casting 12,000 votes, with five councilmen to be elected, and a quota of 2,001. When the first choices have been counted the result would be something like this:

Candidate A, 2,400; B, 1,980; C, 1,500; D, 1,400; E, 1200; F, 1,000; G, 800; H, 600; I, 500; J, 400; K, 220. Clearly A has more than his quota, for 2,001 votes are enough to elect. His "surplus" is 399. If votes are to be equal in value, then these 399 should not be thus wasted but should be made effective if possible. How can this be done?

The first step is to draw 399 ballots from A's pile of ballots at random. The remaining 2,001 votes may then be tied up in a bundle, marked "These 2,001 votes elected A," and laid aside. A is declared elected and no further votes are counted for him. The 399 votes are then distributed to other candidates in accordance with the second choices expressed thereon. Thus one of these ballots may be marked second choice for B; it is added to his pile. Another is marked second choice for C; it is added to his pile; and thus the distribution proceeds, following in each case the expressed will of the voter. But B needs only 21 additional votes for election (1,980 + 21 = 2,001). Long before the entire 399 votes have been distributed B may have received his needed 21. When that point is reached, his 2,001 ballots are tied up and laid aside; he is declared elected and no further votes are added to his pile. Suppose then the tellers in distributing A's surplus come to a ballot marked first choice for A, second choice for B, and third choice for E. Since A and B are already elected, the ballot must be added to E's pile, since that is this particular voter's "next effective choice."

If any other candidate had had a surplus it would have been distributed like A's, the largest surplus being taken first. When the surpluses have all been disposed of, the next step is to begin to eliminate low candidates, the one having the smallest vote and the poorest chance of election being taken first. Suppose that K, with 220 first choice votes, received only 5 second choice votes from A's surplus. His total, 225, is still the smallest of all. His candidacy would then be canceled by the tellers and his 225 votes distributed, as before, in accordance with the voters' wishes, to their next effective choices as marked upon the ballots. Thus, as far as possible, every ballot is made effective. If a voter's first choice candidate has no chance of election, his second choice is still good, and the ballot can continue to be transferred until it finally finds a place in the quota of some candidate who is elected. This will in some cases mean only a fourth or fifth choice, but the theory is that it is better for the voter to help elect someone, even if it be not his first choice, than to fail to help elect any one at all.

Following the elimination of K, the next lowest candidate is dropped

and his ballots are distributed as already described. This process is continued until five candidates have received quotas, or until only enough candidates are left to fill the entire number of places. Thus in the Cleveland 1923 election in one district where the quota was 2,963, and six were to be elected, when four had been elected by full quotas there remained three candidates as follows: W, 2,841 votes; B, 2,840 votes, and O, 1,253 votes. The next step would have been to eliminate O, which was done, but it was unnecessary to distribute his ballots, since there remained only two candidates, each with nearly a quota, to fill two places. Consequently W and B were both declared elected and the election was complete.[12] Out of over 20,000 ballots cast in this district, only the spoiled ballots, those on which the voters had not marked enough choices, and the 1,253 credited to O were really ineffective. In other words, 85 per cent of the voters helped to elect some candidate, and most of these voters saw their first choice candidates take office. The parties, too, were well treated in this district. The leading party with 3.4 quotas on first choice elected 3 aldermen; the second party with 1.9 quotas elected 2 aldermen; and all others with 1.6 quotas together elected 1 alderman. The largest party received one representative for every 3,413 first choice votes cast for its candidates. The next largest party received one for each 2,862 first choice votes. All others combined received one representative for 4,775 first choice votes scattered among nine candidates.

What results may reasonably be expected from this method of electing a city council? Among the claims put forward in favor of the system the following stand out as important:[13] 1. That the new method ensures majority control with minority representation; 2. That it saves the expense and trouble of holding primary elections; 3. That it goes as far as possible in the direction of making every vote effective and of encouraging a complete expression of the voter's will, and therefore encourages voting; 4. That it preserves all the advantages of ordinary election at large and by wards without continuing their bad features, and makes gerrymandering futile if not impossible; 5. That it makes the council as truly representative of all elements in the community as is possible; 6. That it makes for cleaner campaigns, since A does not run against B, and there is nothing to be gained and

[12] Raymond Moley, "Proportional Representation in Cleveland," in *Political Science Quarterly*, Dec. 1923, Vol. XXXVIII, pp. 652, 668–9.

[13] The list of arguments here given follows closely a leaflet entitled *A Primer of Proportional Representation for Boston Voters*, 1923.

something to be lost by heaping personal abuse upon another candidate; 7. That in consequence of making campaigns cleaner and less personal, able men will enter the race who otherwise would not have come out, and that issues will become relatively more important; and finally, 8. That the result ultimately will be to make the council a stronger, cleaner, more representative body of citizens.

It is difficult for reformers to restrain their enthusiasms and to speak in the drab terms of the immediately practicable. It is still more difficult for the "average citizen" who hears a reformer expounding his proposals to give due weight to the many qualifications which reformers, if they be intelligent, always make when pressing their views. The man who proposes a political reform may be thinking in terms of small gains made in the course of decades or centuries, but he frequently overstates his case; while his hearers and followers, always hoping for Utopia, come to expect early and extensive betterment. Such has unquestionably been the case with the majority of political reforms proposed for American city government—the "strong-mayor," commission, and city-manager plans, the direct primary, the short ballot, the initiative, referendum, and recall, preferential voting, and proportional representation.

Certainly it is true that city councils elected up to this time in American cities by the Hare system have not been incomparably better than those previously or elsewhere chosen by other balloting methods. It is obvious that the council membership cannot, by a mere change in the method of election, be made better than the candidates who offer themselves for election. Clear it is, also, that in the first few experimental elections under a new system very few persons of distinctly better type than the old councilmen will put themselves forward for the offices. In the meantime the old councilmen, known by the people and supported by their several party organizations, will have the advantage in the poll. In a word, considerable time must elapse before all the benefits of a new system of balloting can be obtained.

The Hare system has not yet been given a sufficiently long and thorough trial to bring out all its possible advantages. Nevertheless the results already achieved in Cleveland and in such smaller places as Ashtabula, Ohio, and Boulder, Colorado, are distinctly encouraging. There has been some improvement in the quality of the council members, more people have been actually represented in the council, and the campaigns have been notably cleaner. In Cleveland an independ-

ent element has been introduced into the council which supplies a very healthy corrective to certain tendencies of party-ruled bodies. The Republican majority in the city actually has a majority of the council, but its control is not so decisive as it formerly was, and the party must therefore tread more warily. The expense of elections to the public treasury has been somewhat decreased through the elimination of the primary, and by the same token the expense and trouble to the voters have been much reduced.

It is only right to say, however, that a few difficulties, not wholly unforeseen, have arisen with the new method of balloting. The American voter is not accustomed to marking his ballot with the figures 1, 2, 3, etc., and he needs to be carefully instructed before each election lest he spoil his ballot by marking X's. In the Cleveland, 1923, election the percentage of spoiled ballots was 7.6 and in the Boulder, 1919, election approximately 25 per cent of the voters failed to mark their ballots correctly. It would appear that this waste of votes is bound to occur as long as state and national elections are conducted by the older method of voting.[14] Then, too, when there are many candidates for a single place, the voter is unable to know enough of them to mark all the choices that he should. Thus a number of ballots become "ineffective" after a few transfers, and some candidates must finally be declared elected without having received full quotas. It is true also that with the decline of personal and partisan acerbities, election contests may lose some of their intensity and that some voters who now take part in election struggles because of the fighting zest which they afford, will remain away from the polls from sheer indifference. The injection of important issues into the campaign will usually suffice to overcome the voter's ennui, however, whereas the difficulties previously mentioned can be overcome by education and by the requirement of more signatures on nomination petitions.

REFERENCES

See end of Chapter XV.

[14] Arnold J. Lien, "Proportional Representation in Boulder, Colorado," in *National Municipal Review*, July, 1920, Vol. IX, pp. 408–10; "America's Fifth City Tries P. R.," in *Proportional Representation Review*, Jan., 1924, 3, pp. 18–19. On the first Cleveland election see also City Managers' Association, *Tenth Yearbook*, 1924, pp. 163–86; *National Municipal Review*, Feb., 1924, Vol. XIII, pp. 72–7.

CHAPTER XV

THE CITY COUNCIL

II. Organization and Work

THE WORK OF CITY COUNCILS

No one can understand city government and its numerous problems without looking occasionally into council chambers to see what work is being carried on there. To be sure, the observer will find great and apparently inexplicable variations among cities in the functions actually exercised by the councilmen in meeting assembled. In some places committees relieve the council of much work; in others the mayor, or the manager, or a board of estimate and apportionment or of public works, has been given powers which trench deeply into the work of the council. Yet on the whole there are traditional modes of thought among Americans which seem to require that certain types of questions be decided by the council and not by any individual or by a board "in a corner by piecemeal." Deeply graven into our city charters and into the common law of municipal corporations are principles which call for votes by the people's direct representatives upon numerous important matters and which require that votes be taken by roll-call, by yeas and nays, and that the names of those voting on both sides be duly recorded and published.[1]

There is, in a word, a rule of due process in municipal affairs which calls insistently for council action upon a host of different matters, and which will not be satisfied with anything less than direct council responsibility. From the legal point of view the council is the central and responsible governing body of the city. Furthermore, it is the council, and only the council, which may exercise the residual powers of the city. Thus if the charter confers a power upon the city but does not especially designate some officer or board to exercise it, the function falls upon the council.[2] Hence in spite of all the specifications

[1] On the law governing the procedure and powers of city councils see generally the works of Dillon, McQuillin, and R. W. Cooley, and the case-books of Beale, Cooley, and Macy cited in the references to Chapter VI.

[2] Central Bridge Corporation *v.* Lowell (1860), 15 Gray (Mass.), 106; Cooley, *Handbook of the Law of Municipal Corporations*, p. 149.

of the charter-makers, a wide range of powers falls to the council under every form of city government; and in the nature of things these powers are among the most important to be exercised by the city authorities.

Thus the observer looking in upon city councils here and there gets an impression of these bodies as the engine-rooms of great factories. Out in the plant with its many workrooms are the hundreds of employees with their numerous tools and machines turning out the actual product, but it is from the smoke-filled engine-room of the council that the impulse comes which seems to set all in motion.

To classify the numerous functions of the council is not an easy matter. There is much overlapping at every point, and nothing seems to be wholly independent of everything else. Looking at the council of a city where its powers are nearly at a maximum, where the mayor and the independent boards exercise least authority, we find the powers of that body falling generally under four major headings. The interrelations of these four groups are too obvious to call for further comment.

I. **Local legislation.** To many persons the council seems to be primarily a body for the enactment of local ordinances or by-laws. An ordinance may be defined as a law of local application, enacted by a city council or other similar body under powers delegated to it by the state, and "prescribing a general and permanent rule for persons or things within the corporate boundaries." [3] We shall speak hereafter of the power of cities to make such local laws. At this point we are concerned with subject-matter.

A considerable number of ordinances deal with the organization and procedure of the local government. Here will be found rules, supplementary to the charter and statutes, providing for the conduct of elections, the organization of administrative departments and bureaus, the creation, powers, and duties of particular offices, the regulation of the local civil service, and the conduct of public business generally. Such regulations are generally of direct interest to the municipal officials and employees, and only indirectly of concern to the entire body of citizens.

A second and by far the largest group of by-laws exists for the direct regulation of persons and property within the city limits. It would be vain to attempt to name all the subjects of such ordinances. They include police regulations on almost every conceivable subject, and

[3] Cooley, *Handbook of the Law of Municipal Corporations*, p. 164.

they are designed in general to promote the safety, the health, the morals, the convenience, and the economic well-being of the citizens. Some of them deal with the planning and platting of the city, with zoning, with building regulations, with plumbing and electric wiring, with the inspection of boilers, the construction of chimneys and sign boards. Others regulate or prohibit certain nuisances and undesirable businesses, such as abbatoirs and tanneries, liquor saloons and gambling dens, peddlers, pawnshops, and fortune tellers. Some provide for the licensing and regulation of other kinds of businesses, providing for proper weights, measures, tests of purity, sanitary handling of foods, while others are more distinctly regulations of personal conduct, such as the old-fashioned "blue-laws." Finally there are the many ordinances governing streets and public places and the traffic therein.

There is, lastly, a third group of ordinances, few in number but often highly important, granting franchises to public utility companies to make special use of the streets, and regulating the business conduct of such companies. In recent years, with the rise of state regulation of public utilities, municipal functions in this field have relatively decreased, and many ordinances have been made obsolete, but the subject is always an important one in cities.

Very few city dwellers realize to what an extent their lives are controlled and protected by city ordinances. To be sure there are differences among cities. In small places the by-laws are relatively fewer and simpler than in cities of metropolitan size and conditions. Furthermore, in some states the legislature passes numerous special laws for cities which take the place of ordinances, or they write so much into a city's charter as to leave relatively less for the council to do. But with the modern tendency toward home rule and short charters the council is being raised again to a position of dignity and power, with a great variety of ordinance-making functions, and even where the legislature interferes most frequently some power of local regulation is always left to the council.

In many cities the ordinances are compiled and published from time to time in thick books, in which the student of urban society finds written at large and between the lines some of the most important of social facts. He learns among other things something of the rapidity with which social and economic changes are going on about him, for in almost any compilation there will be a number of regulations which, though not old, are already practically obsolete.

II. Financial control. While in many cities the council no longer

exercises an undivided control over the municipal finances, yet everywhere the council has some authority in this important field. The functions to be performed in the exercise of this power fall under the following heads:

1. The adoption of the annual budget, and in connection therewith the passage of an appropriation ordinance and of resolutions fixing the tax levies needed to raise the money required.
2. The issuance and sale of bonds, and other borrowing operations.
3. The establishment of salary and wage scales, which may be set by the annual appropriation ordinance.
4. The approval of transfers of funds from one item in the budget to another after the budget has gone into effect.
5. The approval of the letting of important contracts, of the making of important purchases, and often of the payment of bills, judgments, claims, and pay rolls.
6. Provision for an annual audit of the city's accounts.
7. The designation of banks which may become depositaries of city funds.
8. The control in some respects of the investment of sinking funds, revolving funds, and other special and trust funds.
9. The equalization in some cities of the property valuations made by the local assessors for taxation purposes.

In the nature of things financial operations are very largely of a temporary nature. Even the budget is generally to last for but a single year. Consequently the council performs most of its financial functions not by ordinance but by resolution.

III. **Direction of public improvements.** Council action is commonly required at many points in the provision and maintenance of public works and utilities. The council must generally be consulted before plats and plans may be accepted for new residence districts. Plans for all sorts of public buildings, works, and utilities must also generally receive council approval. It is usually the council which establishes and changes street grades, and which orders grading, paving, curbing, sidewalks, sewers, water mains, and other public improvements. It is the council which officially spreads the special assessments for such betterments, and which adopts and reviews the assessment rolls. Resolutions for the purchase or condemnation of lands for public use, for the letting of public works contracts, and for many other similar purposes, must generally come from the council.

IV. **General administrative and miscellaneous powers.** Council

control extends also, to some extent, into the field of administration proper. The council has generally the power to appoint, to control, and to remove certain administrative officers, boards, and commissions. It may direct department heads to prepare plans, to submit reports, to conduct investigations, and to defend the city's interests. It approves official bonds, and designates official newspapers. As a general rule it has considerable control over the city's property, to lease and convey the same. It has generally the power to grant and revoke certain licenses, and to let certain public concessions. The control of elections also is largely lodged in its hands.

It is unnecessary, perhaps, to say that the council's financial and administrative powers, and its control over public works, give it a very real control over the administration, or to repeat that criticism and control of the administration are among the most important of council functions. It is through the representative council that the administrative officers are kept in touch with the people's wishes, and their important mistakes pointed out. To attempt to separate the council completely from the administration is, therefore, to attempt to deprive the citizens of their most effective instrument of control.

COUNCIL ORGANIZATION

For the carrying on of their functions, whether few or numerous, city councils need officers, rules, and generally some committees. The usual officers are a president, a president *pro tem*, a clerk or secretary, a sergeant-at-arms, and perhaps a few pages or other attendants. The smaller the council, of course, the less is the need of having any officials other than the president and clerk. It is common also among large cities to have the city attorney or corporation counsel present as often as possible at council meetings, whereas under the city-manager plan it is customary to have the city manager and perhaps the department heads present as well.

The office of president of the city council in American cities has not been standardized. In some places the mayor, elected at large by popular vote, is ex officio president of the council or of the upper chamber thereof. Such is the situation in Chicago and in San Francisco. Under the commission and city-manager plans it is one of the mayor's principal functions to preside over council meetings. He is then usually a member also, with a vote on all questions but without a veto. In a smaller number of cities, including New York, St. Louis, and Albany,

the president of the council is an additional member elected at large by the voters. He serves then primarily as president of the council, but is also in some cases a member of the board of estimate and apportionment. In general, however, in cities not organized under either the commission or city-manager plan, the councilmen themselves elect their president from among their own number.

The powers of the president of the council depend primarily upon the terms of the charter. The charter generally makes the president a full-fledged member of the council, and thus indirectly confers upon him the right to vote in all cases. There are cities, however, in which he may vote only in case of a tie. Ex officio power to serve on certain boards is also frequently conferred on him by charter.

For the rest of his authority the president depends upon the good will of the council. Where the council itself selects the president, the choice is generally made a party matter, and the president is supposed to act as a partisan. Under such conditions he is very commonly endowed with the power to appoint committees, and it is not uncommon to find the election of president delayed until a slate of committee appointments is made up which is satisfactory to a majority of the members. In other words, the selection of a certain alderman as president often depends upon his promise to make certain committee appointments.

Where the president is not elected by the council, the tendency is to deny him the power to appoint committees as well as other important powers. Thus in New York and in Chicago the committee on rules, selected by the council, nominates the other committees, subject to council approval; in San Francisco the board of supervisors (city council) itself makes the selections; and in Albany the president *pro tem*, and not the president, makes the appointments. In St. Louis, on the other hand, the president, who is elected by the voters, chooses the committees.

Leaving the question of committee appointments aside we may say that the president of the city council has usually the powers commonly attributed to presiding officers by Robert, Reed, Jefferson, Cushing, or any other accepted authority on rules of order. He may preserve order, recognize speakers on the floor, entertain motions, decide points of order and usually also refer measures to appropriate committees, subject always to appeals from the chair. His stated powers do not vary greatly from one city to another, yet it would seem that his actual power is somewhat larger where he has been chosen by, and has the

support of, a majority of the council. By way of apparent exception the mayor of San Francisco, as president of the board of supervisors, is in duty bound "to protect the board from annoyance from evidently frivolous or dilatory motions by refusing to recognize them." [4]

The office of clerk of the city council is almost without exception identical with that of city clerk. In other words, the city clerk acts also as clerk of the council, although he frequently does so by deputy or assistant, particularly where the council consists of two chambers. Because of the close personal and fiduciary relationship existing between the council and its clerk, it has generally been the custom to permit the council to make its own selection for this office, but in some cities he is elected by the voters, and other methods of selection are not unknown.

At the average council meeting, as well as in preparation for it, there is no busier and sometimes no more important person than the clerk. Every item of business must somehow clear through his hands. It is he who sends out notices of the meeting and prepares the docket of business. All papers to be read or considered are presented to him either before or at the meeting. He must have with him the minutes of the preceding meeting and a record of unfinished business, together with all documents pertinent thereto. He must know the provisions of the charter and the laws so as to be able to warn members of business relative to elections, tax levies, budgets, and many other things, which must be transacted on or before certain dates. He sits near the president in the council, advises him on points of procedure, sees that all motions, resolutions, ordinances, and reports are in proper form, keeps the roll of members and the results of roll calls, attests different actions, and in general sees to the numerous details which the members in the heat of debate are prone to overlook. And when the meeting is over he must provide for perfecting the record of the proceedings, for seeing to the publication of the record and of ordinances, and for the sending of the many official notices which the work at a single meeting may require. No official action of the council is too important and none too trivial to require his attention.

Almost all city councils in large cities have also their sergeants-at-arms, pages, committee clerks, and other miscellaneous employees. The duties of these lesser functionaries are not of great moment, but the existence of such positions gives councilmen some patronage to distribute among deserving supporters.

[4] Rule 3, 1922.

COUNCIL COMMITTEES

Like other legislative bodies, city councils generally have a number of committees for specialized study of particular problems. The committees are generally of two types, standing committees which are appointed for a year or two at a time to deal with some continuing problem, and special, select, or temporary committees which are appointed to report on some special problem and which are ordinarily discharged when the report has been made. Committees of the latter type present no special problems and may be dismissed without further comment.[5]

In recent years the standing committees of the New York board of aldermen have numbered twelve, of the Chicago city council twenty-two, of the Boston council fourteen, of the St. Louis board of aldermen seven, of the San Francisco board of supervisors nineteen, and so on. In smaller cities, although there is also much variation in this matter, the number of committees tends to be less than ten.

In cities under commission government there is far less use of committees than in other places. Some city commissions have no standing committees at all. This appears to be for a double reason, first because the commission itself is a very small body, and second and more important because each commissioner is a committee of one for his own department. Under other forms of city government some standing committees are everywhere found, the number depending upon the amount and the variety of work to be done, upon the number of departments in the city government, and upon the number of members in the city council. As a general rule there will be only one committee for each administrative department, such as police, fire, water, health, and so on, together with a few general committees such as rules, state legislation, and finance. At the same time it is not uncommon to have as many committees as there are council members, thus making it possible to give one chairmanship to each member.[6] The Boston council of nine members had fourteen standing committees

[5] While committees are sometimes provided for in city charters, as a general practice the organization of committees will be found covered in the rules of council procedure.

[6] The new Los Angeles charter provides that "All the functions of the government of the city shall, by ordinance, be divided or grouped into divisions equal to the number of the members of the council and each member of the council shall be chairman of a committee consisting of three councilmen for one of such divisions." Sec. 34.

in 1922, of which four included the entire membership.[7] Every member but the president had at least one chairmanship.

There is little uniformity among the titles of committees. This is due in part to mere lack of a common terminology, but in part also it is an indication of the diversity of functions and powers among our city councils. The following committees are, however, very common:

Rules
Finance, or ways and means, with sometimes a separate committee on appropriations

State legislation	Police
Public utilities	Fire
Streets and sewers	Health
Water supply	Welfare.

The size of committees depends to some extent upon the number of members who must be given committee appointments. Thus in large councils such as those of New York and Chicago the committees are also large. Elsewhere, however, committees of from five to nine members are very common, and committees of three members are also frequently met with. In some places it is the practice to give every ward or district one representative on certain important committees. In Pittsburgh under the rules of 1923 every one of the nine councilmen was a member of each of the nine committees.[8] Thus all the committees were able to meet at the same time and place at a time other than that of the regular council meeting, different chairmen taking the chair as different matters came up. This is an unusual arrangement and is not much different from having the council committee of the whole meet on a designated day.

Although committee service adds greatly to their labor, council members are themselves exceedingly reluctant to give up committees and committee meetings. It would be feasible to delegate much of the work done by council committees to department heads and other officers, thus saving the members a great deal of time, but councilmen either have not the power to make the delegation or else they have no desire to do so. The reformer may say what he will about the proper function of the council being that of general criticism and control, but the councilman will continue to desire to delve into the minutiæ of administration. To the general public it may appear absurd to have a council of nine members divided into ten or a dozen committees,

[7] *Municipal Register for 1922*, p. 12.

[8] Rule IX.

but to the alderman committee work is often more important than the work of the council itself.

The simple fact is that council committees do not in the main formulate general ordinances and policies for submission to the council, but deal rather with day to day and year to year business matters of immediate concern to the alderman's constituency. They agree upon public works programmes, salary scales, the increase of police and fire protection, the extension of water mains, and the installation of new street lights. In such matters every member wishes to have a voice, for the agreements made in committee are very likely to be carried out in council. The committee decision in such matters is to council action, what nomination in the primaries is to the following election. One may suffer defeat in the election despite successful nomination at the primaries, but to approach the election without previous nomination is an almost futile procedure.

The public has, however, a real grievance against the overuse of committees by city councils. Since the council may meet frequently as a whole throughout the year there is far less excuse for council committees than there is for committees in state legislatures or in Congress. Committees to some extent divide responsibility with the council, for though the whole body does frequently overrule committee recommendations it would rather approve than oppose unless the committee proposes something which is flagrantly unwise. Furthermore in spite of all the publicity that is in some cities given to committee meetings, they are at best too numerous and too hard to follow. There is reason to believe that log-rolling and trading take place more frequently in committee than in council, and there is opportunity for still other undesirable practices.

COUNCIL PROCEDURE

In the larger cities which are governed under the commission plan it is not uncommon to find councils which are required to meet every business day in the year.[9] These cities constitute, however, an exceptional group. Far more common among the larger cities of the country is the requirement that the council meet weekly either in the afternoon or in the evening of a day named. The time for such meetings is fixed in the charters of many cities, but in other places the charter prescribes merely an annual meeting or a regular monthly meeting,

[9] See for example the charters of St. Paul, Oakland, and Spokane.

leaving it to the council to designate the time for other regular meetings, and to the mayor or a certain number of members to call special meetings as the occasion may require.

The regular frequent short meetings of city councils give them a continuous contact with the affairs coming under their jurisdiction not possessed by state legislatures or by the Congress. The local problems and the interested constituency are also always close at hand. Thus it comes about that council procedure is a very different thing from legislative procedure. The work to be done, as we have seen, is largely administrative rather than legislative in character, and can in the main be handled more expeditiously than legislative work. The small size of city councils tends also toward the facilitation of business. Furthermore a council is not limited to a sixty or ninety day session. In the technical sense of the term a city council has no "sessions" although it has many meetings. Hence it need never be "caught in a jam" of unfinished business as the Congress and state legislatures so frequently are at the end of their sessions. Despite changes in membership the life of a city council is legally continuous. What the old group of councilors leaves partly done the new group coming in may take up and carry to completion. And since sessions never come to an end, there can be nothing in the nature of a "pocket veto." [10]

The fundamental rules governing council procedure will generally be found in a city's charter, and in the legislation under which the city operates. Rules so provided are, of course, beyond the power of the council to amend. It is the practice everywhere, however, to authorize the council to adopt supplementary regulations. Such rules are generally printed in small handbooks for the use of the councilmen.[11]

Many charter provisions regulating council procedure, as well as the decisions of courts, make a sharp distinction between "ordinances" and "resolutions." An ordinance we have defined above as "a law of local application, enacted by a city council or other similar body under powers delegated to it by the state, and prescribing a general and permanent rule for persons or things within the corporate boundaries." An ordinance or by-law is, in fact, the highest and most authoritative

[10] Professor Story in his monograph on *The American Municipal Executive*, p. 134, calls attention to one case where something akin to a pocket veto was expressly provided for.

[11] These rules have been the principal source of information on a number of points of council organization and procedure.

act of which a city council is ordinarily capable. If it be passed in due form, be authorized by the charter, and be not in conflict with any higher form of law, it will have within city limits the binding force of a state law.[12] It is very important, therefore, that care be taken in the enactment of ordinances, and in order to prevent hasty and oppressive action by city councils it has seemed wise to charter framers to provide strict rules governing the passage of such measures.

There is not complete uniformity among city charters in the matter of ordinance procedure. One can learn the rules only by a study of his local charter. In general, however, there seem to be the following requirements:

1. The ordinance must be in writing.
2. It must usually be given three, though in some places only two, readings.
3. As a general rule it may not be passed at the meeting at which it is introduced, and in some cases a definite time interval of a week or some such period must intervene between introduction and passage.
4. Where a time interval is fixed it is commonly required that a copy of the proposed measure be kept on file and open to public inspection at the city clerk's office during the period set.
5. At the time of final passage the vote must be taken by yeas and nays, and the names of those voting both for and against must be duly recorded.
6. The president and clerk of the council must usually sign the proposed measure after it has been passed, while in many cities the mayor has the power to sign or to veto.
7. The ordinance itself must be recorded in the proper book, and it must usually be published in the official newspaper before it can take effect. We have spoken elsewhere of the right of voters in many cities to file protest petitions, and to compel the council to permit a popular vote on the ordinance to be had. In many cities ordinances granting public utility franchises must always be submitted to popular vote.

Unlike an ordinance, a resolution is generally administrative rather than legislative, and does not establish a permanent local law for the governance of men and things. Consequently it stands upon a somewhat lower plane than that occupied by ordinances. Where the charter requires action to be taken by ordinance, the council may not ordinarily pass a mere resolution, nor may it

[12] New Orleans Water Works Co. *v.* New Orleans (1896), 164 U. S. 471.

amend an ordinance by resolution.[13] In general resolutions may be passed at the meeting at which they are introduced. Some charters require that resolutions be in writing, but this requirement is usually satisfied by having the clerk reduce the resolution to writing before the question is put upon its passage. The resolution form is commonly used for the letting of contracts, for ordering paving, curbing, and other public improvements, for making appropriations, authorizing budget transfers, and performing a great number of other routine actions in the conduct of the city's administrative business.

Under the forms of city government which developed in the nineteenth century, the mayor was and still is an important factor in the municipal legislative process. Indeed a number of city charters expressly provide that the city's legislative power shall be vested in the mayor and the council. In early days it was customary to have the mayor a member and president of the council, a position which he still holds in many cities, but at a later date and especially in large cities he was generally separated from the council and given the power to recommend ordinances and to veto measures of which he did not approve. The veto power extends in some places to all ordinances, resolutions, and votes passed by the council, and to items of appropriation as well as to entire appropriations. In some places the veto is merely suspensive, since the council may repass a vetoed measure by an ordinary majority vote. It is common practice, however, to require a two-thirds or even a three-fourths or higher vote for repassage, while in Boston the mayor's veto power is absolute. The time period during which the mayor may exercise his veto power is not standardized, but varies from a few days up to twenty, ten days being common.[14]

A veto power in the mayor is scarcely to be found outside the United States. The power, in other words, is not inherent in the office. If it exists at all it must be conferred in unmistakable language by the laws or the charter.[15] It was apparently unknown either in the colonial

[13] *In re* Wilson (1884), 32 Minn. 145, 10 N. W. 723; Swindell *v.* State *ex rel.* Maxey (1895), 143 Ind. 153, 42 N. E. 528; Cooley, *Handbook of the Law of Municipal Corporations*, p. 153.

[14] On the mayor's veto power see Story, *The American Municipal Executive*, pp. 131–9.

[15] American Electric Co. *v.* City of Waseca (1907), 102 Minn. 329, 332, 113 N. W. 899; Dillon, *Commentaries on the Law of Municipal Corporations*, 5th ed. II, pp. 910–13; McQuillin, *A Treatise on the Law of Municipal Corporations*, Vol. II, p. 967; *Supplement*, Vol. VII, pp. 6685–86.

boroughs or in the English boroughs of the same period, and at no time even in the nineteenth century was the power conferred upon all American mayors. Furthermore, in the commission plan and the city-manager plan of government in our own century the power has been almost entirely wiped out.

After all, of what value to the public is the veto power vested in the mayor's hands? It introduces an additional step into the local legislative process and thus affords an additional opportunity to those who wish to block measures. Where the councilmen are elected by wards and take narrow ward views, the mayor may sometimes be the only person who looks to the interests of the city as a whole.

As a matter of fact, however, it is a question whether the local veto power has not done as much harm as good. It has taken responsibility from the council, and has encouraged councilmen to pass unwise but politically expedient measures with the assurance that the mayor would veto them. Sometimes this has been done with malice aforethought, in order to compel the mayor to do the unpopular thing. The opportunity thus afforded to shift responsibility has not been a healthy influence in municipal affairs. Furthermore, although mayors no doubt have at times in the past saved their cities from unwise measures, especially in the matter of franchise grants, they have also at times been guilty of equally unwise vetoes. The mayor is seldom a superman. He may have more wisdom than a majority of the council, but it is unlikely that he will.

But whatever may have been the facts in the last century when city governments were badly disintegrated and there was perhaps need of some person on whom responsibility could be centered, the situation is to-day rapidly changing. With the spread of the protest and referendum, and of the requirement that no street franchises may be granted without the approval of the voters expressed at an election, there is little danger that city councils will deliberately act against the best interests of the city in important matters. Though less frequently used the popular veto is probably more discriminating and more effective than the mayoral veto. At the same time the reduction in the size of city councils, the use of the short ballot, and the tendency toward the consolidation of city departments under one centralized government, have increased the stability and the responsibility of councils to a notable extent. With further progress along these and other lines of reform, cities will not seriously need the guardianship of one who can set aside the will of the many. The commission and

manager plans of city government furnish ample evidence that it is entirely safe to dispense with the mayor's veto.

It is the common requirement of city charters that council meetings shall be open to the public. While the council chamber is usually not a large room it is customary to provide a number of seats for the public either on the main floor outside of the railing or in a balcony. Where the council is small, as in the commission plan, it is not unusual to find regular provision made for spokesmen of various organizations to present their views directly to the council. Under the Los Angeles rules (1919) an outsider may with council consent speak for not to exceed ten minutes, and there is a total limitation of twenty minutes for speakers on each side of the question.[16] For one who is not a member to speak on measures on the floor of either house of the Congress is a thing almost unheard of. Congressmen are able to do all the speaking that is required. Even state legislatures are very chary in according this privilege. It is only in local bodies that the public is really admitted at all frequently to take part in deliberations. There is, no doubt, some good to be derived from this intimacy between the representatives and their constituents, especially where the council is not fully representative. It is desirable, however, to have strict regulation of the privilege thus extended to the public. Cases are not unknown where large numbers of people, frequently all of one faction, have forced themselves into council chambers and have howled at and threatened members until business has had to suspend.

Although the well-known defects in the law-making processes of state legislatures are duplicated almost point for point in the legislative work of city councils, yet there are many encouraging signs of improvement to be seen. Ordinance making should, of course, be preceded by a careful local survey by experts of the social and economic conditions to be controlled. There should also be a study of the efforts of other cities to solve the same problem, and of the ordinances which they have adopted. Then there should be skilled ordinance draftsmen who not only understand the specific problem but are also cognizant of the local legal and constitutional difficulties. Finally there should be intelligent debate in which the public interests are kept to the fore as much as possible while the special interests are prevented from introducing vitiating amendments.

Of course most cities are very far from realizing this set of ideals. Very few cities can afford to maintain staffs of expert investigators and

[16] Rules XI, XVIII.

draftsmen to aid the councils in their work, nor do the powers in office always wish to have such assistance. The councilmen themselves commonly do not fully understand the problems involved, and consequently their discussions leave much to be desired. The junkets which they frequently take to other cities, even when they are not thinly-disguised vacation trips at public expense, seldom result in any great increase of their knowledge of the subject. "In travelling a man must carry knowledge with him if he would bring home knowledge." [17] Hence, if anyone should go on junkets at the city's expense it should be the city's experts and not its amateurs.

Yet there are factors at work which tend toward the production of better and better ordinances. Outside of the city council are the department heads, social workers, research bureaus, professional societies, and other individuals and agencies which supply specialized knowledge of problems. Many of these in recent years have shown a keen interest in municipal progress. There are also national organizations and nationally recognized experts in particular fields who can in some cases supply what the localities lack. They are frequently called in to help. Thus it has come about that milk ordinances, franchises, traffic regulations, zoning and housing ordinances, and regulations in other fields have come to be steadily improved. There is need for much more work along these lines, but the beginnings have been auspicious.[18]

But even where ordinances are poorly devised and wretchedly drafted the matter is not always serious. In case the regulation is oppressive to any citizen, he usually has recourse to the courts,—of which hereafter. Furthermore the council meets frequently, and for that reason all technical defects found in ordinances when they come to be enforced can usually be remedied with ease.

EXTENT OF THE ORDINANCE-MAKING POWER

The citizen and the taxpayer frequently find ordinances adopted and enforced against them of which they do not approve. When such a case arises judicial action is frequently brought to test the validity of the measure which the city council has enacted. As the result of many adjudications of this kind in both state and federal courts, there

[17] Boswell attributes this saying to Samuel Johnson.

[18] It may be suggested that a volume of model ordinances on important local matters might prove to be an excellent guide for city councils.

has been worked out a group of legal principles concerning the validity of ordinances to which we need to pay some attention. In examining these rules we shall also learn something as to the legal extent of the ordinance-making power.[19]

1. We need to observe in the first place that an ordinance cannot be sustained unless the council has been authorized to pass it by either the charter or some state law. An ordinance enacted without authority is *ultra vires*, or beyond the powers of the city, and is, therefore, void. It must be remembered that a city exercises only delegated powers, that it has not the power to do all the things it pleases. The assumption is that the legislature when enacting or the city when adopting a charter has given full consideration to the needs of the city, and has inserted language to give the municipality all powers really required. In case there has been any omission it can be corrected at an early date either by charter amendment or by a new act of legislation. It is the judicial function to keep cities within the law, not to help them to extend it.

The rule of *ultra vires* does not require, however, that every power of ordinance-making be granted in express words. We need to hark back here to Dillon's rule, stated in an earlier chapter, and to remember that the charter powers of cities may be either (a) expressed, or (b) implied in those expressed, or (c) absolutely essential to the declared purposes of the corporation.

In most city charters there is a long list of specific and enumerated ordinance-making powers as to which there can be little or no question. Beyond these express powers cities and courts must tread warily. The question, for example, of what powers may be implied from those expressed is a difficult one indeed. In general the courts have said that if the charter authorizes a thing to be done, it will be implied that the council has the power to determine the means or methods to be used, but where the mode of exercising the power is also expressed, the council is left without discretion in the matter. Furthermore, the expression of the power to do one thing cannot ordinarily be said to imply the power to do another though similar thing. These and other principles make up what is known as the "rule of strict construction." This is the rule that "all reasonable doubts as to the existence of a

[19] The rules laid down in Chapter VI as to the powers of municipal corporations apply also in large part to the ordinance-making power. See also Cooley, *Handbook of the Law of Municipal Corporations*, pp. 170–87, and the more complete works of Dillon and McQuillin.

power in a municipality must be resolved against it." [20] There is a tendency of the courts in recent years to be more liberal toward municipal powers, but the rules stated above have not yet been abrogated.

In addition to the enumerated powers many city charters contain what is known as a "general welfare clause." In a few places the enumerated powers have been wholly omitted and an attempt has been made in one sweeping statement to confer all possible municipal powers on the city. This is a different matter, however. It is an attempt to return to older and simpler charter forms in which all municipal ordinance powers were granted in one clause. A true general welfare clause of to-day follows or precedes a list of specific powers, and provides that the council may enact ordinances for the "peace, order, good government, and general welfare" of the city, or words to that effect.

An important and difficult question for the courts is whether or not such a general welfare clause really adds anything of importance to the enumerated powers. Many charters dating from the last century are so worded as to make it appear that the general welfare clause merely states general purposes, whereas the enumerated powers give the true extent of the council's ordinance powers. After all, as a matter of logic, why should there be a long list of specific powers if a general welfare clause is of itself sufficient to authorize ordinances for all good purposes? The courts were inclined, therefore, to give little weight to the welfare clause as such. General language was not supposed to overrule specific provisions. Even the more liberal courts held that a general welfare clause could not add new types of powers to those enumerated, but could add only omitted powers of the same kinds as were specified. Thereupon charter framers began to change the wording used in order to make it clear that the general welfare clause is intended to grant powers *in addition* to those especially stated. In a considerable number of recent charters we find, therefore, a new wording of the general welfare clause, or some substitute elastic clause of a very sweeping character.[21] The fact is that in many states the legislatures are becoming more liberal in their grants of powers to cities, and that to some extent the courts are showing the same tendency, with the result that the ordinance power is steadily broadening.

2. In addition to being authorized by the charter or laws, an or-

[20] Cooley, *Handbook of the Law of Municipal Corporations*, p. 126.

[21] See Ch. VI.

dinance must be passed in accordance with the regular procedure. The purpose in having the procedure set out in the charter is to prevent hasty, ill-considered, or secret action being taken. Generally speaking, the courts will not go behind the records of the city clerk in this matter. If his duly-attested record shows that the charter requirements have been complied with, and there is no evidence of fraud or perjury, the courts will consider themselves estopped from further inquiry upon that point.

3. Although apparently authorized by the charter, and passed in accordance with charter provisions, an ordinance may contain matter which is in conflict with some higher form of law. Suppose, for instance, that it is one of the recent zoning ordinances. The charter and laws may authorize zoning regulations, yet a number of such regulations have been held to be contrary to federal and state constitutions.

The superior grades of law with which municipal ordinances may not conflict are as follows:

The United States constitution
Treaties and statutes of the United States
The state constitution
The state statutes
The common law of the state

Although the federal constitution nowhere specifically mentions municipal governments, it includes a few important provisions which bear directly on municipal activity. Thus it is provided in various sections that no state shall "pass any . . . law impairing the obligation of contracts," or "lay any duty of tonnage," or "deprive any person of life, liberty, or property without due process of law," or "deny to any person within its jurisdiction the equal protection of the laws." [22] Although these provisions seem to apply only to the states as such, cities must conform to them also since the city is an agent of the state, and since its ordinances are but local laws passed under authority derived from the state. In other words, a state may not do indirectly through the agency of city councils what it is prohibited from doing directly. Thus it comes about that many city ordinances have been declared void because they violated some right guaranteed by the federal constitution. In fact some of the most important decisions involving municipal ordinances have been handed down by federal courts.

[22] Article I, sec. 10; Amendment XIV.

Federal treaties and statutes are part of the supreme law along with the constitution itself. Consequently a city ordinance must conform to such laws also. In state constitutions, too, there are many provisions covering subjects which may also be dealt with in ordinances, and here again the courts must refuse to enforce ordinances which conflict with the higher law. Cases of conflict between state statutes and municipal ordinances are numerous, of course. They too are settled upon the principle that the inferior must yield to the superior.

The important question which always arises is whether there is actual incompatibility between the ordinance and the other law involved. Different laws coming from diverse sources may well relate to the same subject and yet be entirely harmonious.[23] There may be federal, state, and municipal regulation at the same time of different phases of port administration, of railroad transportation, of commerce in foods and drugs, of the liquor traffic and of theaters and motion pictures, to give but a few examples.

The most interesting problem in this field to-day relates to the liquor traffic and the question of twice in jeopardy. By the 18th amendment the traffic in intoxicating liquors for beverage purposes is prohibited, and the Congress and the several states are given "concurrent power to enforce this article by appropriate legislation." Already the Congress and the great majority of the states have passed enforcement acts dealing with the many phases of this business. Suppose now that in a certain city a man brews beer in violation of both the state and federal acts. May he be tried in both state and federal courts at different times for the same act and be punished twice? The United States Supreme Court has answered in the affirmative.[24] The same act is two offenses. It violates the peace and dignity of both the state and federal governments separately. The laws do not conflict with but run parallel to each other.

But suppose then that the state law permits cities to pass enforcing ordinances as well, and that in this particular city there is a local regulation forbidding brewing of beer. Would it be legal for the city to enforce its ordinance, thus making theoretically possible three

[23] If this were not so, federalism such as we have in the United States would be impossible. The national, state, and local governments may regulate the same persons and tax the same incomes and inheritances without serious conflicts. See *The Federalist*, No. 32.

[24] United States *v.* Lanza (1922), 260 U. S. 377, 43 Sup. Ct. 141.

punishments for the same act? A number of state courts have answered "yes" to this question too, although this is not everywhere the rule.[25] It has been held that the city ordinance in such a case is not an obstruction but an aid in the enforcement of the state's law and policy. Furthermore the city is not merely the agent of the state. It has a life and being, a peace and dignity of its own, separate from that of the state, and when its peace is violated it may impose a separate penalty.

The rule which we have been discussing might then be worded as follows: That a municipal ordinance must not be incompatible with or subversive of any law of higher grade. To summarize the many decisions in which this rule has been applied would require several chapters in a book like this. A San Francisco laundry ordinance was held void for violating the rights of Chinese residents under the "equal protection of the laws" provision of the Fourteenth Amendment;[26] a New Orleans dock and wharf ordinance was declared invalid because it levied an unconstitutional "tonnage tax;"[27] an ordinance of Richmond, Virginia, was invalid for levying a tax on national banks contrary to the federal statute;[28] and a Seattle ordinance regulating pawnshops was illegal because it violated the treaty-rights of Japanese subjects.[29] These are but a few of many important decisions of the United States supreme court in similar cases, and the state decisions are far more numerous.

4. But it is not only the written law in its various degrees of supremacy, or the precepts of the constitution, with which city ordinances may not conflict. Long before we had written constitutions in this country, and before the courts began to build up our system of constitutional rules, there had been in course of development in the mother country and also here a body of case law, court-made or common law, dealing with the ordinance powers of corporations. This branch of corporation law has continued to develop both here and in England along similar lines, but in this country it has become in part almost indistinguishable from the corresponding branch of constitutional law. Among these

[25] For an affirmative decision see City of Virginia *v.* Erickson (1918), 141 Minn. 21, 168 N. W. 821. See, also, Dillon, *Commentaries on the Law of Municipal Corporations*, 5th ed., II, 965–72.

[26] Yick Wo *v.* Hopkins (1886), 118 U. S. 356.

[27] Cannon *v.* New Orleans (1874), 20 Wallace (U. S.), 577.

[28] Merchants National Bank *v.* City of Richmond (1921), 256 U. S. 635, 41 Sup. Ct. 619, 65 L. Ed. 1135.

[29] Asakura *v.* City of Seattle (1924), 44 Sup. Ct. 515.

common-law tests of the validity of ordinances, aside from numbers 1 and 2 above, different courts have announced the following: [30]

Ordinances must be reasonable.

They must not be oppressive.

They must not be partial or discriminatory, but impartial, fair, and general.

They must not unduly restrain lawful trades.

They must not contravene common right.

They must not be vague and ambiguous.

These rules, it will be observed, are much like those of modern constitutional law which say that laws shall not deny "equal protection of the laws" or "due process of law." But these principles go much farther at several points than do the constitutional law rules. In fact it may be laid down as a general principle that the courts will eye much more critically the ordinances of a city than they will the statutes passed by a legislature. They assert, at least, that they will not declare any act of state legislation void merely because it is unreasonable or oppressive, but only when it is proved to be contrary to the constitution.[31] The respect which courts owe to coördinate branches of the state or national government, such as the legislature or the Congress, to support their enactments if it is at all possible, need not be extended in the same degree to city councils and other local bodies. The latter may be presumed to have good intentions, but they have not necessarily the same experience, knowledge, or breadth of view as would be possessed by a more widely representative body. Because of these facts they sometimes pass regulations quite out of keeping with the customs and habits of a free people, and contrary to the general principles of reason, fair play, personal liberty, and regard for personal, property, and commercial rights which lie at the very basis of the common law. Hence the courts have felt bound on occasion, to declare void certain municipal ordinances on general principles which have probably never been fully enacted into law. They have substituted their own judgment as to what is fair and reasonable for that of the city council. On the whole there is little to condemn in the principles which have been laid down, but it is important at least to know that ordinances must pass this additional test of validity.

[30] Dillon, *Treatise on the Law of Municipal Corporations*, 1st ed., pp. 278–82; 5th ed., II, 924–44; Cooley, *Handbook of the Law of Municipal Corporations*, pp. 170–87.

[31] Powell *v.* Pennsylvania (1888), 127 U. S. 678.

REFERENCES

That much-condemned institution, the American city council, is dealt with to some extent in almost every serious work on municipal government in this country, and in some like Mr. Dooley's essay on "Hangin' the aldermen" which are not so serious. The student cannot dip into the literature anywhere without finding something about the council, yet unfortunately there is no adequate monograph on the subject.

The standard works on American city government contain some good chapters on the council, notably Munro, *The Government of American Cities*, Ch. VIII; *ibid.*, *Municipal Government and Administration*, Vol. I, Ch. XVIII; Woodruff, *A New Municipal Program*, Ch. VIII, contributed by Munro; Goodnow, *Municipal Government*, Ch. IX; and Fairlie, *Municipal Administration*, Ch. XVII. A series of articles on city councils which began in the *National Municipal Review*, Vol. XIII, 1924, promises to yield some interesting concrete data on local situations. The councils of Philadelphia, Portland (Oregon), and Denver have already been dealt with. In the books on the commission plan referred to at the end of Chapter XIII, notably those by Chang, Bradford, and Woodruff, will be found discussions of small commissions as councils. Reports of municipal surveys, notably that of Cincinnati, 1924, and some municipal histories contain excellent studies of councils in particular cities. On the general position of the council in the city government, see the articles by E. Dana Durand entitled "Council *versus* mayor," published in the *Political Science Quarterly* (1900), Vol. XV, pp. 426–51, 675–709, and on the relationship of the mayor to the council see Story, *The American Municipal Executive*.

The source materials for this subject would include city charters, state laws, council proceedings, rules of council procedure, and judicial reports. The common law governing council organization, powers, and procedure is dealt with at length in the commentaries of both Dillon and McQuillin on municipal corporations. A part of Mr. McQuillin's work was published originally as *A Treatise on the Law of Municipal Ordinances*, Chicago, 1904.

CHAPTER XVI

MUNICIPAL FUNCTIONS

FORM AND FUNCTION IN ADMINISTRATION

The human hand and eye, the fish's fin, the bird's wing,—each has been formed or selected by nature for the work which it has to do. In like manner the skilled workman fashions or selects his tool for the task he has in hand, and the intelligent farmer develops his field system to bring about the greatest productiveness. In the realms of government and administration, too, we see the rule in operation that the nature of the work to be done or the result to be achieved controls the type of organization that we adopt. Function in the long run determines form. The function is the end; the form is essentially nothing but the means.

Over short periods of time, however, form may determine function. The means at hand temporarily determine the end which can be attained. There are limits to what the human hand and foot can do, and therefore it has been necessary for civilized man to develop machines to help him to do many kinds of tasks requiring great effort or great precision, and to carry him for long distances at high speed. Until these machines could be put at man's disposal he had but little advantage in his struggle with nature and there were many things he could not do. And so in the field of administration, if we may carry our analogy further, there are many things which cannot now be accomplished because our administrative methods and machinery are not adequate to the tasks. We cannot reduce the infant mortality rate as much as we should like, or get as much good paving for each dollar expended as we think we should. We hardly dare to have our cities take over the chief public utilities because we fear that their administrative standards and organization are inadequate for the purpose.

Yet we see very clearly that cities are to-day already getting better results in administration than they did fifty years ago, and we believe that much of the improvement is due to better organization and better methods. American cities have molded and remolded their administra-

tive machinery at a rapid rate of late years, and many of them are still engaged in the process. Conscious effort at improvement is widespread, for the people generally are coming to see the tremendous public benefits to be derived from improved administration. If we had in our American cities, without increase of their present resources, well-devised administrative systems staffed by trained, intelligent workers, free from the baneful influences of spoils and patronage, and guided by leaders who would follow some definite plans of development over a period of years, we could have our cities made over within a generation. This is not to say that all of the hopes and dreams of the most ardent city-planners could be made to come true so quickly, but that all of the things really essential to the health, cleanliness, and convenience of the people could undoubtedly be accomplished.

While it is not the purpose of this volume to give a detailed description of the functions and activities of American cities, we must take a little view of this subject in order to understand the city's administrative problem. We must somehow sense the work that needs to be done before we can comprehend the problems of administrative organization. The machinery must be adapted to the work it has to do.

In this chapter we shall, then, discuss to some extent the problem of municipal functions. Since there is not space for a complete enumeration and description we must proceed by the method of showing a sample here and another there. The law of the subject cannot, of course, be ignored, nor can the theory and the trends of development. "It is one business to do what must be done, another to devise what ought to be done." [1] The administrative machinery needs to be adapted not only to immediate requirements but also to the developments which are to come.

MUNICIPAL FUNCTIONS IN SEVENTEENTH AND EIGHTEENTH CENTURY ENGLAND

The English ancestors and contemporaries of the American colonists do not appear to have been troubled by any fine-spun theories as to the proper range of municipal functions. The corporate authorities of the boroughs and even of the parishes simply did those things which seemed to them useful for the promotion of the welfare of the community. It is only too true that many of the corporations were inefficient

[1] Sir Henry Taylor, *The Statesman*, London, 1836, p. 156.

and that their work was but wretchedly done. In consequence many of them were in fact deprived of the opportunity to carry on some of the most essential of local functions. Even the policing, lighting, cleansing, and repairing of the streets were in many cases taken from them and imposed upon other public authorities. It was only where the authorities were truly efficient, therefore, that the English boroughs of the 17th and 18th centuries really developed to the full the possibilities of public service. The little borough of Wisbech, in the Isle of Ely, a place of only a few thousand inhabitants, provides us our best example, for the Webbs tell us that it "may with some warrant claim to have furnished between 1689 and 1835 the most pure, energetic, and enlightened urban administration in the Kingdom." [2]

The independent householders of this little community chose annually ten "Capital Burgesses" to be a sort of local council, and this body in turn chose one of its members as "Town Bailiff" to execute its orders. This early and simple city-manager plan of government was little changed through several centuries. The people chose only the abler men of the community to be Capital Burgesses and kept a close watch over them, and the results which this little group obtained are little short of remarkable. So well did the corporation manage its property and its income therefrom, that at no time during a century and a half was it necessary to levy any local property tax.

"This strict and economical administration of the corporate revenues was combined with an active policy according to the best light of the time. When the relief of the poor was the main function of the Capital Burgesses, we see them, instead of giving doles and pensions, providing hemp on which to set the poor to work; building a workhouse in 1720 out of bricks made on their own land; establishing in 1691, and again in 1764, regular schools of spinning; and supplying the children with both religious and industrial instruction. When most other towns were still relying for their municipal services on the performance by each individual householder of his ancient personal service, Wisbech was already being paved, sewered, cleansed, lighted, watched—no doubt very imperfectly, but at least on some general plan—by paid officers or public contracts, at the expense of the corporate funds. But the householder was not allowed to escape. From the middle of the eighteenth century onward, we find the Town Bailiff issuing printed notices to the inhabitants, insisting on the cessation of this or that

[2] Webb, Sidney and Beatrice, *English Local Government, The Manor and the Borough*, I, pp 144–8.

street nuisance or encroachment, and following up these notices by prosecutions before the Justices of those who disobey such injunctions. In 1810, when the population and trade were rapidly increasing, the Capital Burgesses strengthened the police powers thus exercised by the Town Bailiff by obtaining a Local Act, in which, among other things, the definition of public nuisance was enlarged and a more speedy summary remedy provided. A paid Town Inspector was then appointed to enforce the law. Meanwhile the navigation of the tidal river, on which the prosperity of the town depended, was, from 1710 onwards, constantly being improved at the public expense. The buoys and beacons were the object of continual attention; a special officer, the 'Beaconer,' was appointed to look after them; the channels, always liable to be silted up, were dredged and deepened; pilots were licensed and a harbour-master was appointed; a public crane was erected as early as 1719, a public warehouse built in 1788, and a special timber wharf constructed in 1795; a more commodious 'custom house' was provided in 1801, whilst throughout the whole period we see the Capital Burgesses carefully watching the numerous drainage schemes or canal bills promoted by the neighbouring Fenland authorities, lest any new project should interefere with the depth of the river channel. . . . In 1786 the Capital Burgesses succeeded in buying up the lease of the market rights, which had been granted by the Bishop of Ely to a private lessee, when they at once provided standard weights and measures and set to work to enforce market regulations. At first they let the tolls by public auction. In 1810, however, their Local Act gave them increased market powers, and during the next few years, when agricultural prices and rents were alike high, the Capital Burgesses used these powers to erect a public exchange and commodious market buildings for corn and fat cattle respectively; they freed the shambles; they established a fish market; they provided a spacious public warehouse for the storage of wool; they contrived an elaborate system of allotting the stalls in the corn market by ballot, so as to avoid favouritism; they appointed their own collectors of market tolls and a Market Beadle; and in 1829 they were far-sighted enough to decide 'with a view to increase the beneficial purposes of the several markets, and to induce the public to resort to the town in greater numbers,' on a policy of drastic reduction in the amount of the market tolls. Space does not permit us even to mention all the manifold public enterprises successfully administered by these Wisbech Burgesses—their constant struggle to reclaim the 'drowned lands'

of their estate; their replacing of the old wooden bridge in 1756–1758 by a handsome stone one; their erection of public stairs at a precipitous descent; their provision of flat pavements for their footways in 1811; their active and generous co-operation in the provision of facilities for religious worship; and their liberal subscriptions to such enlightened enterprises as the provision in 1826 for the public use of hot and cold salt-water baths, the maintenance of an iceboat to prevent any stoppage of the drainage current by frost, and the provision of a savings bank. But it was perhaps in their zeal for public education that the Capital Burgesses of Wisbech were most in advance of the rulers of other towns. The Grammar School, for the maintenance of which they had been originally incorporated, was always the subject of their liveliest interest and constant attention. The master whom they appointed, though always in holy orders, was expressly forbidden to accept a living, or even to officiate as a clergyman. He was not allowed to become a Magistrate or even a Capital Burgess. He was, relatively to the standard of the times, paid a liberal salary and provided with skilled assistance. In addition to this ancient Grammar School, the Capital Burgesses started a Sunday school in 1786, and, in coöperation with some of the principal inhabitants, in 1811–1813, also a 'Lancastrian school' for the children of the poor. They were even so exceptionally enlightened, at the very early date of 1714, as to rearrange and open to the public a library of books, apparently provided by a voluntary book club in the seventeenth century, which was subsequently expressly designated a 'public library;' providing new shelving, getting the books catalogued, and appointing a paid librarian, whose catalogue was 'to be lodged in the Town Hall for the public use.' "

THE FUNCTIONS OF A COLONIAL BOROUGH

We see, therefore, that in England in the 17th and 18th centuries there was little to prevent boroughs from exercising wide and extensive powers or from carrying on various and important activities. It is certain that the American colonists who came from England did not bring with them any ideas that it was wrong for cities to perform numerous functions for their citizens. Although not all the people took part in the government, the thought seems to have been that the borough corporation was the incorporation of the people themselves, and that through this form of organization the people might

perform for themselves as a group almost any function they chose, so long as they did not violate some law of the kingdom. When we examine the functions of the colonial boroughs of the same period we find the same principles exemplified. Many of the activities carried on by a colonial borough would to-day be denounced by unthinking people as socialistic, but to the people of that time there was nothing wrong in what was being done.

Let us examine, for a moment, the charter granted to the city of Albany in 1686 by Governor Dongan on behalf of King James the Second, one of the earliest of colonial city charters.[3] This document not only confirmed the inhabitants in their possession of "divers and sundry Rights, Liberties, Privileges, Franchises, Free Customs, Preheminences, Advantages, Jurisdictions, Emoluments and Immunities" which the town was reputed to have held from earlier times, but also granted very considerable new privileges and powers. The townsmen had previously provided themselves with a "town-hall or stadthouse," a church or meeting place, a burial place, a watch-house, a tract of land used by the inhabitants as a pasture, and a ferry, together with land and other appurtenances to these various facilities. All of these were secured to the corporation in the new charter. We would think it strange indeed for a modern American city to provide places of religious worship. Burial grounds are now very commonly provided by private companies which often enter upon this business for a profit. No modern city feels called upon to provide pasturage for the cows and horses of its inhabitants, although one city is reported to have put a cow into its zoo, that the rising generation may know what a cow looks like. Even ferries are very commonly owned and operated by private corporations instead of by the cities themselves. Indeed, when compared with present standards Albany in 1686 was already committed to a policy of municipal socialism.

The king's agent, the governor, saw fit to extend rather than to contract the scope of the city's corporate activities. In a broadly inclusive statement he conferred upon the municipal authorities the powers "to establish, appoint, order and direct the establishing,

[3] The Dongan charter of the city of Albany, reprinted in *Municipal Code of the City of Albany*, etc., 1910, pp. 7–30. The reader will find a full account of the activities of the colonial city of New York in Arthur Everett Peterson and George William Edwards, *New York as an Eighteenth Century Municipality* (Prior to 1731, and 1731 to 1776), Columbia University Studies in History, Economics and Public Law, vol. 75, 1917.

making, laying out, ordering, amending and repairing of all streets, lanes, alleys, highways and bridges, water-courses and ferries, in and throughout the city, or leading to the same." Extensive property rights were also granted, and numerous business privileges, some of which amounted to monopolies. The charter gave the city "all the waste, vacant, unpatented and unappropriated land lying and being within the said city, . . . together with all rivers, rivulets, coves, creeks, ponds, water-courses, . . . and also the royalties of fishing, fowling, hunting, hawking, mines, minerals and other royalties and privileges belonging or appertaining to the city of Albany, gold and silver mines only excepted."

As if these grants were not enough, the royal governor conferred also upon the city corporation the fishing privilege in the Hudson throughout Albany County, the right to cut firewood and timber for building and fencing purposes in the neighboring manor of Rensselaerwyck for twenty-one years, the right to take all stray animals found within the city, the power to license tavern-keepers, victualers, and all retailers of liquor, and the right to hold a market twice a week forever, on Wednesdays and Saturdays. The monopoly of the Indian trade throughout an extensive area was also granted to the corporation for the benefit of its freemen, and all others were forbidden to interfere therewith. Only the freemen could engage in "any art, trade, mystery, or manual occupation within the said city, liberties and precincts thereof," and only the corporate authorities could confer freemanship, upon the payment of fees specified in the section.

The power of taxation was not conferred by the charter. In lieu of this the city was given another source of revenue, namely, the ownership of land. From the Indians the city was authorized to purchase fifteeen hundred acres, and in addition the power was granted "to purchase, have, take and possess in fee simple, lands, tenements, rents, and other possessions, within or without the same city" to the annual value of one thousand pounds, and to lease or dispose of the same at will. In other words, the municipal corporation was to be allowed to go extensively into the real estate business.

Most of the functions and powers of which we have now spoken were considered to be of a proprietary or even private nature. In the case of the license moneys it was specifically provided that no accounting need ever be made to the king or his successors. But the city had also some powers of a local governmental character. For example, the corporation was authorized "to make laws, orders, ordinances, and

constitutions in writing; . . . for the good rule, oversight, correction, and government of the said city, and liberties of the same;" to impose fines and other penalties upon those who violated such ordinances; and to have a city court consisting of the mayor, recorder, and aldermen not only to punish for violations of ordinances but also to punish numerous petty common-law misdemeanors and to sit in such civil cases as actions for debt, trespasses, and ejectments.

We have neglected to speak of the public weighhouse, of the regulation of the Indian trade, of the assize of bread and beer, of the granting of hunting licenses, and of other matters which make the Dongan charter to Albany appear to be one long catalogue of local functions. Enough has been said, however, to indicate the scope and character of the activities authorized in the seventeenth century for the corporate authorities of that little Indian trading post, Beverwyck or Albany (as it came to be called). The only important powers and functions not conferred upon the city were taxation and education. The power to levy taxes was controlled by the colonial assembly, whereas education had not as yet been fully established as a public function.

THE DOCTRINE OF LAISSEZ FAIRE

But the days of which the Webbs wrote and the days of the first Albany charter are "far away and long ago." From the middle of the now remote eighteenth century and down through the nineteenth, strong winds of individualistic doctrine swept over England and over America, too, and their influence is still strongly felt. There arose a group of thinkers who saw many evils in the extensive activities of public authorities. They demanded more freedom, more liberty for the individual. Only in a world of free competition could men develop themselves to their full stature and vigor as men. Private initiative must be given more scope and play. In the keen struggle of man against man, to produce better goods and to sell them cheaper, there would be worked out the ideal state of society. Goods would become fine, plentiful, and cheap, all at the same time. Men would become strong, quick, and resourceful. Only the fittest would survive.[4]

[4] There are many writings on individualism, of which we may mention Herbert Spencer, *The Man versus the State*, originally printed in the *Contemporary Review*, 1884; John Stuart Mill, Essay *On Liberty;* W. Donisthorpe, *Individualism, A System of Politics;* D. G. Ritchie, *Principles of State Interference;* and W. S. M'Kechnie, *The State and the Individual.*

Now all of this Utopian scheme was impossible if the government as such were to engage in some industries and to regulate others. What independence, after all, has the civil servant who is bound up in the red tape of "the circumlocution office"? What freedom has the business man if a government official may pry into his books, disclose his private affairs, and give orders as to the conduct of his business? "That government is best," said Thomas Paine, "which governs least." And more than a century later, when the tide had already begun to set strongly against the *laissez faire* practices of an earlier day, Herbert Spencer wrote of "the sins of legislators" and "the coming slavery." [5] He looked with something akin to horror upon the increase of social legislation and governmental activity.

In America, where doctrines of personal liberty were strong while the authority of the state was relatively weak, another factor helped to give a powerful ascendancy to individualistic thought. The country's area was tremendous. Natural resources seemed to be quite unlimited. While on the one hand the government itself was quite incapable of directing the development of the great national resources, on the other hand an aggressive and individualistic people, rapidly increasing in numbers, was constantly trying to lay hold upon the land and its natural goods. So great a stimulus was constantly being given to individual enterprise, and so effective in the mass was the work of the countless individuals who struggled to tame the wilderness, that for decades neither national nor state governments needed to expand their functions in any notable degree. In the few cases where attempt was made to "put the government into business," as in the cases of banking and canal building, either the jealousy aroused was so great or the failure of the enterprise so clear, that no permanent extension of functions was accomplished.

The forces which operated down to a time long after the Civil War to make America primarily individualistic had their effect also upon the local units of government. Their functions were so held in check that they increased very slowly if at all. The urban water supply might be considered *par excellence* a governmental function, yet in many American cities private companies and individuals were given franchises to supply this service. When gas was found to be an improvement over oil for street lighting, there were companies ready to take over this business, which fell naturally as a plum from a tree into the lap of private industry. The same was true of other local utilities

[5] *The Man versus the State*, chapter headings.

as they came to be established—street railways, electric light and power, telephones, radio broadcasting, and what not.

At the same time some of the older functions were being dropped, here and there, from the list of public activities. With the separation of church and state, towns and cities generally ceased to support the meetinghouses. Ferries were in many cases transferred to private ownership. Towns and cities in the east in many cases gave up or lost their common lands, whereas in the west they were generally created without such perquisites. The idea of the city or town as landholder found difficulty in crossing the Alleghenies. The market, the fair, and most of the other special business privileges once possessed by the colonial boroughs, generally fell before the forces of an individualistic democracy which proclaimed the equality and the equal rights of all men.

Anyone who wishes to see what a change a century and a half can make in political ideas should compare Governor Dongan's charter of 1686 to Albany with the charter granted by the legislature of Illinois to the incorporated town of Chicago in 1835.[6] The former city was granted the numerous powers, properties, business privileges, and functions already enumerated. To the nascent city of Chicago were granted no substantial property rights in land, no special business privileges or monopolies, no right to control the composition of its own membership, no power to acquire land beyond its boundaries except for cemeteries, no authority to maintain a meetinghouse, no common pasture, the right to license but not to own and operate ferries, no royalties, no power to grant hunting and fishing licenses, and no power to provide a local court. The only trading functions conferred at this time upon Chicago were "to lease the wharfing privilege of said town" but not to operate wharves directly, and "to build market houses; [and to] establish and regulate markets," which may have included the power to operate them.

PUBLIC OR PRIVATE CORPORATION?

The contrast between the Dongan charter to Albany and the 1835 Chicago charter of which we have just spoken appears to be most striking on the side of so-called "private" powers. The old English borough corporation, of which Albany in 1686 was a copy, was es-

[6] James, *The Charters of the City of Chicago*, Part I, pp. 31–6.

sentially a private corporation, as we should say to-day.[7] It was not primarily an arm or an agent of the central government for local rule, but a corporation of limited membership possessing property and special privileges which it might use for local advantage in any way that it saw fit. Its charter came from the king, who could not grant governmental powers in the broad sense of the term. In the colonies, at least, the king and governor could not grant to boroughs the power of taxation.

The western American city of the early nineteenth century, on the other hand, was primarily an agent of the state and had generally very few "private" powers and very little corporate property. Its charter came from the legislature of the state which had ample power to confer upon the city a wide range of governmental powers. A general power of taxation was one of the principal powers thus conferred. Tax revenues came to take the place of the old "corporate income." A limited power to levy special assessments was also included. The taxing power thus conferred stamped the American city as a distinctly "public" corporation, a true government, and assimilated it to the group of governments of which the state itself was a member. With this all-important means at their disposal American cities were able, at a later date, to reach out and to take over again some of the powers which once belonged to the cities and boroughs of England and of the colonies. The power of the purse has often proved to be the most important power of government.

RISE OF PUBLIC REGULATION AND COLLECTIVISM

In thus briefly tracing the change from a private to a public character of American corporations in recent times we have lost sight, for the moment, of the influence of the doctrine of *laissez faire*. That doctrine, coupled with the social and economic conditions prevalent in America down to about 1880, resulted in the checking of the growth of public functions, national, state, and local. But the changed character of municipal corporations made it appear, at least, that what-

[7] The law distinguishes sharply to-day between "private" and "public" or "municipal" corporations. If we trace back far enough, however, we find that the law makes no such distinction. See *The History of the Law of Business Corporations before 1800*, by Samuel Williston in *Select Essays in Anglo-American Legal History*, vol. 3, pp. 195–235, and the following essay in the same volume by Simeon E. Baldwin.

ever functions a city had were essentially public. There could be no taxation except for a "public" purpose.[8]

Then came a striking change, disappointing the hopes of the individualists. From 1880 on the growth of cities was phenomenal. Every decade thereafter in the United States has shown a larger growth in urban than in rural population. The rush into the cities has accelerated instead of abated; but as it was big with promise for the industrial future of the country so it was also bristling with problems which could not be solved by the individualistic formula of "let alone." Health and police, local transportation and lighting, housing and city planning, imperatively demanded the action of the local government. Unrestricted private competition in some fields, such as gas and street railways, led first to ruin for some of the competitors and then to the destruction of competition itself through the combination of the forces of those who remained. Unregulated private building made cities hideous, unsafe, and insanitary. Railroads and factories ruined the waterfront, or obscured in smoke and drowned in noise fair districts which should have been set aside for homes. In fact, in many ways *laissez faire* produced results which were just the opposite of what had been expected. Too often self-interest was not as enlightened or as public spirited as it should have been.

Disappointed in *laissez faire*, hopeful men and women began again to see promise in governmental control and activity. More and more Americans have become "collectivistic" in their attitude toward social and economic problems. They have been willing to try one public experiment after another. Governmental regulation returned once more, to protect the people against impure foods and drugs, to prevent discrimination by common carriers and public utilities, to suppress monopolies and "trusts," and to forbid the sale of securities backed only by "blue sky." The new movement became so pronounced in a few years that home critics began to call the United

[8] It is interesting to observe that the courts still speak of the "private" as distinct from the public or "governmental" powers of cities. The distinction is practically without importance except for determining the city's liability for torts. (See Chapter VI, above.) A street railway system owned and operated by the city is a "private" undertaking to the extent that the city is liable to pay damages to persons injured through negligent operation. On the other hand, it is so completely "public" that taxes may be levied to pay deficiencies in operating revenue if not to pay the entire cost of acquisition and operation. Opinion of the Justices (1919), 231 Mass. 603, 122 N. E. 763; dictum in Fellows *v.* Walker (1889), 39 Fed. Rep. 651.

States "the land of the regulated," and to speak of the good old days when men were still free.[9]

The new movement has affected not only the national and state governments, but cities and other local units as well. In large cities the demands for increased governmental activity have been particularly noticeable, because uncontrolled social and economic forces wreak greatest havoc where the population is most dense. It is almost a maxim that, other things being equal, municipal expenditures tend to increase in amount per capita with the growth of a city's population; and while expenditures are not an exact index of the number of municipal activities, they do indicate roughly the extent of functions performed. Rate or rapidity of urban growth has also a pronounced effect upon the growth of a city's functions; whereas in smaller cities the sanguine expectation of growth or the desire to emulate larger cities in the vicinity are factors which cannot be ignored.

We are here brought again to the problem of social forces and pressures. The principle of individualism is a cold and arid thing in the face of living demands for new services. When a health department or a woman's club can show how, by the expenditure of a few thousand dollars annually on child welfare clinics and visiting nurses, the infant death rate can be cut fifty per cent, an alderman's individualistic principles would have to be as laws engraved in bronze for him to resist the demands arising for the expenditure. Ordinarily it is from the laboring classes that the demands come for municipal markets and municipal ownership of public utilities, but other classes also work for increased or improved municipal service. While the laboring class is interested primarily in public services which reduce the cost of living, business men are concerned with those which help to build up business in the city. Real estate dealers will have a primary interest in parks, street layout, and city planning; women's organizations, churches, and social centers may work hardest for better health and housing measures, education, and police protection; while local and neighborhood societies will struggle for improvements beneficial to them. Every such group or interest brings its own pressure to bear upon the government of the city. Consistency is hardly to be expected. A newspaper may thunder editorially against the socialistic

[9] *The Wisconsin Idea* by Charles McCarthy portrays vividly some phases of the movement for public regulation of business. The Progressive Party platform of 1912 is an exceedingly important social document which shows how a large proportion of the American people thought on these questions at that time.

tendencies of the day, and at the same time give ardent support to an expenditure of millions on a municipal auditorium because it will help to bring conventions and business to the city. A commercial organization may fight desperately to prevent municipal ownership of the electric light plant or street railway, yet may bring all its influence to bear upon federal, state, and local governments to have the river or harbor improved at public expense.

THE FUNCTIONS OF A TYPICAL CITY

Perhaps no two cities in the country have had identical histories in the development of local activities, but taking one with another we find that all have exhibited the same general tendencies. It is impossible, of course, to give a complete history of the growth of functions for all cities, but a study made in 1922 of the increased activities of the city of Detroit is an excellent pioneer piece of research to which attention should be called.[10]

Detroit began its municipal history in 1809 and became a city in 1824. It then had eleven elementary functions, branches, or officers upon which it expended money, namely, elections, a legislative body, an executive, legal advice, taxation, a treasurer, police, a municipal court, a fire department, an elementary school, and street grading. Of these, it will be observed, only the last five really rendered services directly to the people. The other six may be classed as "overhead" or "staff" functions, necessary and useful indeed, but not themselves the ends for which a city exists.

From 1824 down to the beginning of the Civil War only ten new functions were added, namely, poor relief, street paving, sewers, sewer cleaning, water supply, school census, controller, street lighting, high school, and prison, making in all twenty-one functions or objects of expenditure in 1861. In the next twenty years Detroit grew to be a city of 116,000 people, yet it added only fourteen new functions, of which the most important were a public library (1864), parks and public buildings (1871), and an evening elementary school (1875). In 1880 the total number of separate functions was 35, of which ten really gave important services directly to the people, while the others

[10] *The Growth of a City*, published as No. 70 of *Public Business* by the Detroit Bureau of Governmental Research, June 1, 1922. See also *The American City*, November 1922, vol. 27, pp. 407–10. The results of this study, classified according to the purposes of the services rendered, are shown on pp. 404–405, herein.

were overhead functions or were mere subdivisions of some one or other of the ten major services.

In the first 57 years of its municipal history (1824–80), the Detroit city government seems merely to have been laying foundations for future activities. The next forty years (1881–1920) saw the city's functions increase more than four hundred per cent, from 35 to a total of 184. In the same period, of course, the city grew tremendously, reaching 993,000 population in 1920. Of necessity its municipal budget increased too. As late as 1856 the city tax levy was only $164,543, or $3.85 per capita.[11] In 1920 its tax levy was $35,086,000, equal to $35.31 per capita.

We cannot afford, however, to leave this study of the growth of functions in Detroit without examining it somewhat more carefully. We must question whether the increase is real or only apparent. A close examination of the list of functions printed by the Detroit bureau quickly proves that the increase is partly real and partly only apparent.

The merely apparent increases fall under two distinct heads. First there are numerous cases of specialization and internal reorganization for the better handling of the public business. In 1912 a civil service commission was set up to centralize and improve the selection of city employees. In 1919 the office of purchasing agent was created to handle the purchasing of public supplies. In each case the function in question had actually been performed previously by the city, but performed with less uniformity and skill. These cases illustrate the specialization and redivision of labor which are constantly taking place in government. Such specialization is wholly desirable, and should in most cases result in increased public efficiency and often in reduced expenditure.

A second group of apparent increases consists of those in which the city itself begins to do what it had formerly let out to contractors and private business concerns. In 1920 a central garage was established for the city s automobiles, which had apparently been stored and repaired previously in various private garages and elsewhere under no public supervision, and perhaps at considerable expense. From one point of view this change involves an increase in public functions, but really it is only a different method of expending moneys which are already being spent by the city for automobile storage and repairs.

In Detroit, as in every city, there have also been some very real increases in services rendered to the people, and these are undoubtedly

[11] The figures prior to 1856 are not readily available.

more numerous and more important than the apparent increases of which we have just spoken. These also are of two sorts. There are, first of all, numerous expansions and diversifications of functions within accepted or long established fields of municipal activity. The educational function in Detroit, for example, began in 1824 with the provision of a single elementary school. Between 1825 and 1861 a high school was added and provision was made for a school census. In the next twenty years educational work expanded very little. A public library was added, and also an evening elementary school.

Beginning in 1881, however, there was an era of rapid expansion. Twelve new educational functions were added between 1881 and 1900, and twenty-seven more from 1901 to 1921. The educational system during these years diversified and increased its services at the rate of one new function per year. Work of collegiate and professional school grade began to be offered. Provision was made for training teachers. Evening schools and summer schools of several types, and special schools for the deaf, the blind, and other unfortunate classes, were established. The library expanded its facilities and made them more widely available through reading rooms and branch libraries. Within the school administration itself there was considerable specialization. Thus from the slight and half-forgotten seed planted prior to 1824 there comes finally a tree of strong trunk and luxuriant foliage, a modern urban educational system. For a century it had been accepted that education is a public function. The only question that needed to be considered was this,—How complete and extensive a school system should be established? As a matter of fact the pressure of different groups in the community probably has had more to do with answering this question than the school authorities. Taxpayers may complain of the expense of the "frills and fads" in education, but so far in America they have not been able to check the movement for diversification of educational facilities.

Equally good illustrations of the tendency just described might have been taken from the fields of police or fire protection, from health administration, from parks, or from almost any other field. But in addition to such expansion and specialization in recognized fields of city activity there has also been some tendency for cities to invade new grounds. In Detroit, for example, the street railways recently passed into the hands of the city government, which is now assuming the responsibility for local transportation. This is a relatively new sphere of municipal activity in America although common enough

INCREASE OF MUNICIPAL FUNCTIONS: CITY OF DETROIT: 1824–1921

	First City Charter 1824	*Additions 1825–61*	*Additions 1862–80*	*Additions 1881–1900*	*Additions 1901–21*
I. *Overhead functions*					
Elections	Elections	—	—	—	—
Legislation	Legis. Dept.	—	—	—	—
Courts	Mun. Court	—	—	—	—
Executive	Chief Exec.	—	—	—	—
Law	Leg. Advice	—	—	City Attorney	—
Finance	Taxation	—	—	—	—
	Treasurer	Controller	—	—	Purchasing Agent
Personnel	—	—	—	—	Civil Service Com.
General					Complaint Bureau Auto Repair Testing Laboratory Central Garage Auto Dispatch City Census
II. *Line functions*					
A. Protection of life and property					
					Police Medic. Serv.
					Police Pensions
					Motor Police
			Detectives		Traffic Police
1. Police	Police	Prison	Pounds	Criminal Ident.	Police Training Sch.
			Police Signals	Mounted Police	Property Identif.
			Harbor Police		Police Record Bureau
					Auto Recovery
					Vice Squad
					Safety Bureau
					Women Police
				Fire Alarm Tel.	
2. Fire	Fire Dept.	—	—	Fire Pensions	High Pressure Water
				Fire Medic. Serv.	Fire Prevention
				Fire Boats	
					Inspec. Sch. Children
					Eve. High School
					Tech. High Schools
					Free Eve. Lectures
					Educ. of Cripples
					Educ. of Stammerers
					School Transportation
				Teachers Coll.	Continuation Sch.
				Periodical Lib.	Educ. of Anemic
				Truancy Police	Educ. of Blind
				Ed. Incorrigibles	Summer Elem. Sch.
B. Promotion of welfare				Lib. Read. Room	Summer High Sch.
	Elementary school	Sch. census	Public Lib.	Free Sch. Books	Summer Tech. Sch.
1. Education		High Sch.	Eve. Elem. Sch.	Art Museum	Evening Tech. Sch.
				Reference Lib.	Educ. Research
				Kindergarten	School Gardens
				Lib. for Blind	Junior College
				Educ. of Deaf	School Purchases
				Branch Libraries	Sum. Teachers Coll.
					Eve. Teachers Coll.
					Parent. Schools
					Contin. Sch. Exten.
					Educ. Cost Acctg.
					Medical College
					Summer Jr. Coll.
					Evening Jr. Coll.
					Sch. Architecture
					Mov. Picture Censor
					Detention Home
2. Social welfare	—	Poor Relief	—	Outdoor Relief	Charity Registration.
					Social Service
					Community Centers
					Probation Extension
					Prison Farm

INCREASE OF MUNICIPAL FUNCTIONS: CITY OF DETROIT: 1824–1921—Continued

	First City Charter 1824	*Additions 1825–61*	*Additions 1862–80*	*Additions 1881–1900*	*Additions 1901–21*
3. Health...	—	—	Sanitary Police	Health Super't Vital Statistics Hospital Milk Inspection Food Inspection Free Medic. Serv. Chemical Lab. Bacteriol. Lab. Nursing	Meat Inspection Tuberculosis Clin. Venereal Clinic Tuberculosis Hosp. Child Clinic Contagious Hosp. Serology Lab. Serology Inspec. Ambulance Hospital Maternity Hosp. Tuberculosis Camp Psychological Clinic Nutrition
4. Control of Business and Housing	—	—	Licenses Weights Insp. Public Scales	Building Inspec. Plumbers Exam. Plumbing Inspec. Electrical Insp.	Smoke Inspec. Housing Inspec. New Bldg. Inspec. Sign Inspec. Wire Inspec. Boiler Inspec. Elevator Inspec. Oil Inspec. Refrigeration Inspec.
C. Parks, Buildings, Works, and Utilities. 1. Parks and Bldgs.....	—	—	Parks Public Bldgs.	Zoo Bathing Beach Band Concerts Green House	Aquarium Conservatory Forestry Baths Refectories Boating Playgrounds Festivals Park Sewage Treatment Recreation Camp
2. Public Works....	St. Gradng.	Street Pavg. Sewers Sewer clean. Street Ltg.	Permit Insp. Engineering	Garbage Collec. Rubbish Collec. Hand Str. Clean. Snow Removal Alley Cleaning	Sidewalk Permits Sewage Pumping Street Flushing Comfort Stations Boulevard Light. Street Opening Bur. Grade Separation Bur. City Planning House Number. Bur. Motor Sweeping Research Engineer
3. Public Utilities...	—	Water Sup.	—	Market Sheds Water Meters Meter Repairs Ice Service Gas Meter Insp.	Motor Bus Ferries Street Railway

abroad. Various other new functions are frequently suggested. In New York there is a municipal radio broadcasting station, and there is talk of municipal control of the sale of theater tickets to prevent "gouging." From other cities come reports of municipal milk supplies, airplane landing fields, baseball and hockey teams, theaters, and many other novel public enterprises.

THE LAW OF MUNICIPAL FUNCTIONS

One may well ask, as he contemplates the steady increase of municipal activities, whether there is no limit to the movement short of

complete municipalization of all important local services and industries. It is hard to perceive any positive limits, but there are some very real checks upon the movement toward increase of functions. In most states public opinion, and particularly legislative opinion, is still fundamentally individualistic. It is difficult, therefore, to get legislative authority for the increase of local functions except by piecemeal. Cities having home rule would seem to be in an easier position in this respect, but of course no city may exercise powers or perform functions not clearly conferred upon it by law or charter.[12] A second check is financial. The wealth and prosperity of the city are important factors. Small cities, and particularly those having small valuations and low per capita incomes, will necessarily lag behind larger and more prosperous communities. Legal tax limits and debt limits cannot always be entirely ignored,—and there may even be natural limits to the proportion of the local income which can be taken by taxation. Furthermore some services cannot easily be municipalized because they extend beyond the boundaries of any single city.

In addition to such political and economic checks upon the growth of municipal activities there are certain very important constitutional and legal limitations upon which great reliance is being placed in this country. Written constitutions and court decisions have attempted to lay down lines between public and private purposes, and also between national, state, and municipal powers, which it is not possible for city governments to ignore.

Acting apparently under a strong sense of individualism and of the rights of private property and business, the American courts have successfully attempted in a number of cases to call a halt to the increase of governmental activities by declaring that certain actions are not taken for a public purpose and hence are invalid.[13] Thus it is held that the police power may not be used for any but a public purpose, and that private property may be taken under eminent domain and taxes may be levied only for public purposes or for public use. The courts have felt called upon in specific instances to set their judgment of what is public use or public purpose up against the enactments of legislatures and the ordinances of city councils. There

[12] See pp. 109–112, 381–382, above.

[13] For the law upon this subject see especially McBain, *American City Progress and the Law*, particularly Chs. V–IX. An older work which is still useful is O. L. Pond, *Municipal Control of Public Utilities; a Study of the Attitude of our Courts toward an Increase of the Sphere of Municipal Activity*, 1906, in *Col. Univ. Studies*, vol. 25.

are reasons for this attitude of the courts, among which must be mentioned the fact that the judges are sworn to support the federal constitution, which contains the provision that no state shall "deprive any person of life, liberty, or property without due process of law." [14] "Public purpose," according to the judges, is an essential element of "due process." It is not due process for a city council to order A, who has committed no wrong, to turn his property or any part of it over to B, who is deserving of no special public reward. A few cases will illustrate this point.

In the case of Loan Association *v.* Topeka, the city council of Topeka, proceeding under an act of the legislature, issued its bonds to the amount of $100,000 which it donated to a bridge manufacturing company as an aid to it and also as an inducement to the company to locate in Topeka, thus helping to build up the city.[15] When the city subsequently refused to pay interest on the bonds the loan association which owned them brought suit for recovery. Without specifically mentioning the Fourteenth Amendment the United States Supreme Court said in this case that it would be unlawful to levy a tax upon the residents of Topeka to pay interest on the bonds in question, because the donation was not for a public purpose. The principal object was to build up a private business. "If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. . . . No line can be drawn in favor of the manufacturer which would not open the coffers of the public treasury to the importunities of two-thirds of the business men of the city or town."

This important decision had, as a matter of fact, been preceded by several opinions and decisions of learned state supreme courts in which substantially the same conclusion had been reached. Thus it had been held in Massachusetts that the legislature had no power to authorize the city of Boston to loan money to help reëstablish private businesses which had been destroyed in the great fire of 1872.[16] In Maine it had been held that cities could not be empowered to go into the manufacturing business or to make gifts for the encouragement of private manufacturing enterprises.[17] Indeed, even by the time of the decision

[14] United States Constitution, 14th Amendment. But see McBain, "Taxation for a Private Purpose," in *Pol. Sci. Quar.*, June, 1914, Vol. XXIX, pp. 185–213.

[15] (1875) 20 Wallace, U. S., 655.

[16] Lowell *v.* Boston (1873), 111 Mass. 454.

[17] Opinion of the Justices (1871), 59 Maine 590.

in Loan Association *v.* Topeka the distinction between "public purpose" and "private purpose" had come to be a well-established tenet of our constitutional law, applicable in many different ways. When applied to the taxing power this distinction has been held to forbid various public expenditures, such as bounties for promoting business or agriculture, and the investment of public funds in certain types of business. When applied to eminent domain it has been construed to forbid the taking of private property for "private" drainage ditches and the excess condemnation of land, while in connection with the police power it has been held to prohibit the exclusion of certain types of business from residential and other sections.

We see, then, that the courts have been trying to distinguish between what is "public" and what is "private," and that in so doing they have taken over into the law the gist of the theory of *laissez faire*. The fatal defect in the decisions arises out of the impossibility, usually spoken of by the courts as the difficulty, of drawing any such line with precision and finality. The questions involved are essentially questions of fact and policy and not of law. Hence different courts have reached opposite conclusions upon substantially the same question, and the law has been thrown into great confusion.

One needs to ask, What is my "private" business? Is my getting intoxicated even in my own home a private affair? The law in many states denies it. If I, a "private" citizen, hold up and rob another private citizen in his private home of his private watch is it a strictly private matter? Everywhere the common law asserts the contrary. The fact would seem to be that, unless we live as Robinson Crusoe did, each one of us has a public as well as a private side to his life and personality. We take very few if any steps as private citizens which do not affect us also as members of the public. Our every act may have some public consequences, however small and remote.

What things shall be left to individual initiative, therefore, is entirely a question of "public" policy, and not a question of constitutional law at all, except in so far as provisions have been written into federal and state constitutions. For the courts to attempt to lay down rules of the kind stated in the leading cases discussed above is not very helpful to those who as legislators are attempting to solve social and economic problems. Granting the soundness of the rule that public moneys shall be expended only for public purposes, it is primarily a question of fact, and not of law, whether a particular

purpose is or is not public. Times and conditions change. The backwoods and the wilderness become the thickly built up modern state with its innumerable problems of police and sanitation. A merely negative decision saying that the government may not undertake a certain function may, in times of emergency, stand directly in the way of a desirable governmental action. The urgent needs of one decade may compel a step to be taken which the finespun theory of an earlier day declared to be unconstitutional.

The courts have already given us an excellent illustration of the uncertainties in decisions of the kind under consideration. The supreme judicial court of Massachusetts in 1892 held in an advisory opinion that the legislature had no power under the constitution to empower cities and towns to enter the business of buying and selling fuel to their citizens.[18] It was the reasoning of the court that the taxing power was involved; that taxes may be levied only for such purposes as benefit the people as a public or a community; but that in the case of the fuel business there would be the promotion by taxation of the merely "private interests of many individuals." The same court had previously approved public ownership and operation of gas and electric light works, and the sale of gas and electricity to private consumers.[19] Now gas is a fuel, and electricity is the equivalent of one. The casuistical distinction in the fuel yard case between a benefit to many persons as individuals and a benefit to the same persons as a community or public is, therefore, very hard to follow. Certainly it is a most slender thread upon which to hang a decision fraught with so much importance to the public.

As a matter of fact, however, the court had other reasons also for its decision. It said that from the time the constitution was adopted down to the time of the decision the buying and selling of fuel "was a well known form of private business;" that it was like other private businesses; and that it (the court) was "not aware of any necessity why cities and towns should undertake this form of business any more than many others which have always been conducted by private enterprise." Here, of course, the court was introducing its opinion on a question not of law but of policy. It recognized, however, that the situation might be different "in extraordinary exigencies." Another point of distinction between a gas supply and a fuel yard was that the

[18] Opinion of the Justices (1892), 155 Mass. 598; and see also Opinion of the Justices (1903), 182 Mass. 605.

[19] Opinion of the Justices (1890), 150 Mass. 592.

former required the installation of pipes and other permanent fixtures in the streets. The conclusion was that "the constitution does not contemplate" the fuel business "as one of the ends for which the government was established, or as a public service for which cities and towns may be authorized to tax their inhabitants."

This opinion was widely read and quoted, and it had, no doubt, a very wide influence in checking some parts of the movement toward municipalization. It could not stop that movement, however. In 1903 the state of Maine enacted a law authorizing municipal fuel yards, and when taxpayers of the city of Portland appealed to the courts to prevent such a use of tax moneys they lost their suits both in the state and in the national supreme court.[20] The plaintiffs were willing to admit that heat might be sold by the city in the form of gas or electricity conducted through pipes and wires in the street, but argued that the sale of heat in the form of fuel to be delivered by wagons over the surface of the streets was an entirely different matter, and not a public business or purpose. We shall not discuss here the decision of the supreme judicial court of Maine, to which some logical objections can be made, but shall turn directly to the United States supreme court decision.

When a case finally reached the latter court the question was whether under the Fourteenth Amendment the state was not prohibited from taking money by taxation for the support of municipal fuel yards. By unanimous vote the court answered this question in the negative. "We see no reason," runs the final decision, "why the state may not, if it sees fit to do so, authorize a municipality to furnish heat by such means as are necessary and such systems as are proper for its distribution. Heat is as indispensable to the health and comfort of the people as is light or water. In any event we are not prepared to say that when a state authorizes a municipality to tax with a view to providing heat at cost to the inhabitants of the city, and that purpose is declared by the highest court of the state to be a public one, the property of a citizen who is taxed to effect such purpose is taken in violation of rights secured by the Constitution of the United States." The decision is remarkable in that it is almost wholly without qualification, and does not rest upon the ground that there was an emergency or "extraordinary exigency" to justify municipal ownership. The Minnesota supreme court has fallen completely into line with the

[20] Laughlin *v.* City of Portland (1914), 111 Maine, 486; Jones *v.* City of Portland (1918), 245 U. S. 217, 38 S. C. 112.

United States Supreme Court decision in the fuel yard case,[21] and the latter court has in subsequent decisions sustained other government ownership projects.[22]

We can see clearly in the fuel yard cases, therefore, the unfortunate and confusing results of judicial attempts to lay down permanently binding rules on the question of public purpose. Temporarily a court decision may hold back the stream, but it is not likely to produce beneficial results by so doing nor is it at all sure of ultimate success.

NATIONAL, STATE, AND MUNICIPAL FUNCTIONS

We have now spoken briefly of the line which the courts have tried to draw between public and private, or governmental and non-governmental functions. There are other lines, also, to which we must give some attention. Granting that a function is public or governmental, another question arises. Does the function belong to the national, state, or some local government? This is in part a question of constitutional law, and for the rest a question of statute or common law. Closely related is the question of policy: To which unit should the function belong as a matter of good administration? A simple diagram will show how these questions relate to the one previously discussed.

Non-governmental or private functions	*Governmental or Public Functions* 1. Functions of the national government 2. Functions of the state governments A. Those exercised directly by the state central government B. Those exercised through local units such as { Counties, Cities, Towns, School districts, etc.

The functions of government are, in the United States, divided between the national, state, and local governments. Legally and fundamentally the division is between the national or central government and the states. To the former the federal constitution delegates the following functions as well as a few minor ones which it is unnecessary to list here:

[21] Central Lumber Co. *v.* City of Waseca (1922), 152 Minn. 201, 188 N. W. 275.
[22] Green *v.* Frazier (1920), 253 U. S. 233, 40 S. C. 499, 64 L. ed. 878.

1. All foreign affairs
2. Practically all military affairs, army and navy.
3. The regulation of foreign and interstate commerce.
4. Money, national banking, and bankruptcy.
5. Postal affairs.
6. Weights, measures, patents, etc.
7. Protection of individual rights against the states.
8. Control of federal property, domain, and territories.
9. Financial, legislative, executive, and judicial powers necessary to carry out the ends mentioned above.

We cannot get a complete picture of the national government's functions, however, without paying a little attention to the centralizing process which has now been going forward with increasing speed for more than a generation. The prohibition amendment is but one result of the newly released national social forces which are operating to center more and more governmental activities at Washington. By the increasing use of its tremendous income and resources the national government is wielding every year a greater and more powerful influence upon state and local governments, and is participating more and more fully in the performance of functions which were never intended for the central government at all. To say this is not to pronounce any adverse criticism of the course of events. The national authorities have been as impotent to stem the rising tide of governmental activities as have the states and the cities.[23]

To the states the constitution of Washington's day reserved all functions of government not delegated by it to the United States nor prohibited by it to the states.[24] There was no specification or enumeration of such powers, for that was neither necessary nor possible. Who can say to-day what functions a government will need to perform to-morrow? We cannot attempt an enumeration, therefore, but we can describe some of the main objects of state activity and suggest under each head the types of functions which serve to accomplish the end in view. In a general sense state functions fall under four main headings:

[23] For the influence of the federal government on cities see Ch. IV, above. The general trend of federal centralization will be found portrayed from different points of view in Walter Thompson, *Federal Centralization;* R. E. Cushman, *Studies in the Police Power of the National Government*, reprinted from the *Minnesota Law Review*, Vols. III, IV (1919, 1920); and C. W. Pierson, *Our Changing Constitution.*

[24] United States Constitution, 10th Amendment.

1. The protection and improvement of society and of the individual, *i. e.*,
   safety: criminal law; police and fire protection, etc.
   health: sanitation; quarantine; hospitals; housing, etc.
   morals
   social welfare: family life; women; children; dependents and defectives; religion, etc.
   education in all its branches
2. The regulation and promotion of the people's political life, *i. e.*,
   elections: registration; nominations; parties; corrupt practices, etc.
   local government
3. The protection and improvement of economic welfare and processes, *i. e.*,
   civil laws governing business; contracts; corporations and partnerships; negotiable instruments; coöperation, etc.
   business frauds, monopolies, etc.
   banking, trust companies, loan associations, savings banks, etc.
   labor: wages, hours, conditions of work, industrial accidents, etc.
   agriculture and marketing
   transportation: railways, canals, terminals, highways, etc.
   communication: telegraph, telephone, radio, etc.
4. The protection and development of natural physical resources,
   the land: irrigation; drainage; land settlement; mining, etc.
   water power, public utilities, etc.
   forestry
   fish, game, birds, etc.

To the accomplishment of these important ends the states have also ample legislative, executive, judicial, financial, and penal powers.

Such a list as we have here given cannot be exhaustive. What we are interested in is this question: Which of its functions has the state reserved for itself, and which has it devolved in whole or in part upon cities and other local units within its limits? A comparison of the state functions listed above with the functions of the typical city of Detroit reveals some very interesting facts. While the city's functions almost parallel those of the state they are particularly numerous under the first heading. Within its area the city usually provides at its own expense for nearly every function connected with the protection and improvement of society and of the individual. The state passes numerous laws, and sets standards, and perhaps provides inspectors and some

state aid for the promotion of the safety, health, morals, social welfare, and education of the people. The state also provides the higher institutions of learning, and some central institutions such as state hospitals, reformatories, and prisons, things which are beyond the scope or resources of any but the largest cities. With these exceptions, however, it is the cities and other local units which raise the money, provide the working forces and facilities, and do all other things necessary to carry on the functions noted under the first heading above.

Under the second, third, and fourth headings noted above, the city's functions are relatively less numerous but still highly important. The state itself regulates business in the most important and general respects, leaving to the city the work of protecting the local consumer, of regulating strictly local business and of providing such means of local transportation as streets and alleys, and in some cases street railways. The city also provides some public utilities, notably a water supply, but other utilities are generally in private hands and come under state instead of local regulation.

No doubt the strong American bias in favor of local self-government has been a factor in bringing about the delegation by the states to the cities of so many important governmental functions. When the public was compelled to take responsibility for carrying on some functions it seemed much more "democratic," and less of a breach with the principles of *laissez faire*, to let the local community do the work than to have the state do it. As a very clear-thinking English writer has phrased it: "Many things may be undertaken by local bodies which it would be unwise to put under the control of officials at a distance. 'Municipalisation' is, in many cases, a much better 'cry' than 'Nationalisation.' Experiments may also be more safely tried in small than in large areas, and local bodies may profit by each other's experience." [25] Other factors working in the same direction were, no doubt, the early inadequacy of the state central government for handling the new functions, and the need also of permitting a great deal of local variation, as in education, health, and police.

It is the writer's belief, however, that financial considerations have in many cases been most important of all. In this field the true test of interest in the function is the financial test. No state has yet shown itself sufficiently interested even in education to provide all the funds

[25] Ritchie, *The Principles of State Interference*, pp. 62–3; and see also J. S. Mill, *Representative Government*, ch. 15, and W. S. M'Kechnie, *The State and the Individual*, pp. 292–5.

needed to support all the schools out of the state treasury. "State aid" is usually but a small fraction of the total expenditure required. The principal burden falls always upon the local community which is the community most interested. What is true of education is even more true of fire and police protection, health work, and many other activities, and the result is that municipal budgets are per capita much higher than state budgets.

We are here face to face with some of the most perplexing and important problems in the whole field of local government. (1) What functions shall the state government devolve upon the local units? (2) In what manner shall this delegation be carried out? (3) What form of control shall the state governments exercise over the functioning of local bodies? Speaking of his own country Sidney Webb has said that the problem of "how best to organise the relation between central and local administration, so as to ensure that enforcement of 'the National Minimum' in the conditions of existence without which the nation itself cannot permanently survive" is "in reality the most important of the political problems that confront the nation." [26]

Within the range of functions over which the state has control, there is no very important legal obstacle to the legislature's delegating to cities wide powers of local ordinance-making as well as extensive authority to administer both state and local functions. It is for the legislature to say in nearly all cases whether a matter is of local concern or not.[27] Of course in the nature of things a city would hardly be permitted to legislate for the whole state, nor would it be authorized to carry out any administrative functions which gave it far-reaching control over citizens living beyond its boundaries.[28] Just as the legislature must itself exercise its general legislative power, so also the judicial power is generally understood to belong essentially to the state. "Municipal courts," as we point out elsewhere, are generally state courts.[29]

But if the question of law is neither important nor difficult, the

[26] Preface to J. Watson Grice, *National and Local Finance*, p. v.

[27] Some phases of this question are discussed by Professor H. L. McBain in his articles on "The Delegation of Legislative Power to Cities," *Pol Sci. Quar.* (1917), vol. 32, pp. 276–95, 391–411. See also his work, *American City Progress and the Law*.

[28] See pp. 98–99, above, for the related question of the extra-territorial powers of cities.

[29] See pp. 303–304, above, and Ch. XXIII.

question of policy is both. It is conceivable that a state would give its cities so little to do that "local self-government" would be but a name and a sham. It is also conceivable that a legislature would burden the cities of the state with functions so numerous, arduous, and costly, and would provide so little intelligent central supervision over local activities, as to bring about a régime of local extravagance and corruption to be followed inevitably by high taxes, inflated debts, and acute local distress.

Here are many specific questions. Should every city, regardless of size, location, or resources, be authorized and encouraged to support a university? To provide a prison? To regulate the rates of local public utilities? To have undisturbed control and use of streams, with the right to pollute them at will? To enforce the prohibition of the liquor traffic? To incur debt to an unlimited amount? It must be obvious to all that in most commonwealths a single state university can do better work than a series of weak but expensive municipal institutions, and that the uniformity which is desirable in prison administration can best be obtained through the establishment of one or a few large state prisons. Other reasons equally cogent can be given for the vesting of other functions also in the state itself rather than in the city. Indeed if we kept an eye single to immediate efficiency and economy we should have no difficulty in working up a strong theoretical case for a high degree of functional centralization in the state. In so doing, however, we should be overlooking the real advantages of local self-government as the chief training school for our national democracy, as well as the practical fact that the states have not as yet the interest or the revenues needed to effectuate this centralization.[30]

As we have shown in another place the impossibility of distinguishing between what is "public" and what is "private," we may perhaps be pardoned for observing that it is well-nigh impossible to find any

[30] American students have given some attention to this problem, as witness the series of monographs on centralization of administration in the *Columbia University Studies in History, Economics, and Public Law*, Vols. VIII, IX, X, XVI, XVII, XVIII. See particularly the last chapter in R. H. Whitten's *Public Administration in Massachusetts*, in Vol. VIII of this series. Sidney Webb's work on *Grants in Aid*, his preface to J. Watson Grice, *National and Local Finance*, as well as that work itself, some passages in G. D. H. Cole's *The Future of Local Government*, and other recent English works, contain excellent suggestions as to the allotment of functions to central and local authorities. Attention should also be called to John Stuart Mill's *Representative Government*, ch. 15.

function which is of purely local interest or any which is of purely statewide interest. The state is an aggregate of localities; the local community is a component part of the state. To attempt to draw absolute lines between state and local functions is to attempt the impossible as well as the undesirable. From the point of view of economy of social effort nothing could be more disastrous than a Chinese wall to separate state and local governments, assuming that such a wall could be built. When we speak of centralization and decentralization, therefore, we do not have in mind anything absolute. It is a question of degree or emphasis, a shifting of the center of gravity or of power to the right or to the left.

Let us consider, then, the shift toward a greater centralization of governmental functions which has been going on for some years. The indispensable prerequisites which made this shift possible were (a) the prosperity of the people, (b) their enlarged sense of social responsibility, and (c) the discovery by the states of new sources of revenue which do not bear so directly upon the mass of the people. Formerly the states had relied almost exclusively upon the highly unpopular direct property tax. To-day they levy corporation taxes, inheritance and income taxes, and a number of other special taxes which either do not touch the great mass of the people at all, or reach them indirectly and invisibly. Possessed of these new sources of income the states can now do things not feasible before. State expenditures and activities are increasing at a steady and even rapid rate.

We have then to consider this question: Does the present expansion of national and state governmental activities mean that municipal governments will have less and less to do until, like certain organs in the body, they become useless or even atrophied, and may be removed without loss of function? Something very much like this has been happening to townships in some middle-western states,[31] and it is, of course, not uncommon to find particular offices rendered useless when their functions have been transferred to others.

If there were a fixed quantity of governmental functions, the increase of national and state functions would necessarily imply a decrease in the activities of local units. But, of course, there is no such fixed quantity of things for government to do. A glance at the chart of Detroit's functions will illustrate what is meant, but history and reason

[31] See for example the discussion of the decline in importance of the township by W. J. Shepard in *Ohio Academy of Social Sciences, Publication no. 5*, 1922; and in H. G. James, *Local Government in the United States*, pp. 282–4.

demonstrate this point beyond cavil. The functions of government may increase or decrease. To-day we are in a period of rapid expansion. The doing of one thing suggests and leads to the doing of another. The satisfaction of one want leads to the discovery of another want still unsatisfied. The provision of pensions for firemen is but a step leading to pensions for policemen, then for teachers, and so on until all municipal employees are provided for. The establishment of special educational facilities for deaf persons leads to the provision of special facilities for crippled persons, for stammerers, and for all other unfortunate classes.

As we have pointed out elsewhere, therefore, the increase of national and state activity really stimulates the cities, school districts, and other local units to expand and improve their activities as well.[32] A state health department does not supplant local health authorities, but encourages, strengthens, and activates them. Indeed, Professor R. M. Maciver seems to be wholly correct in saying that "there is no contradiction between the completest activity of the smaller and the completest activity of the greater community. Local activities demand central activity, central activity is fulfilled through local activities." [33]

Modern American tendencies toward centralization have, therefore, had as yet no appreciable effect in the direction of curtailing municipal functions. New times may bring changed conditions, of course, but at present it would appear that the expansion of municipal activities is bound to continue *pari passu* with the increase of the functions of both national and state governments.

THE FUTURE OF MUNICIPAL FUNCTIONS

There is at present no good reason to believe that any of the fundamental activities of cities will in the near future be either abolished or completely transferred to any other unit of government. There will be a slow, steady increase of central supervision, but the protection of life and property through police and fire departments; the promotion of human welfare through education, recreation, social welfare and health work, the regulation of business, building, and housing, and the improvement of cities generally through city planning, the layout, construction and maintenance of parks and streets, and the provision of water supplies and sewage systems will continue to be fundamentally the duties of the city.

[32] See Chap. IV, above.

[33] *Community: A Sociological Study*, p. 256.

It is to be expected, also, that municipalities will expand their work along these well-established lines. They will learn how to do better and better what is already being done, and this will necessarily involve more specialization within departments and the expansion and multiplication of facilities. What was being done in this direction by the city of Detroit throughout its history, and especially from about 1890 on, was also being done by other cities, and is still being done everywhere in the United States. That this movement will continue far into the future can hardly be doubted. There is no important sign of its abatement.

In the present state of American public opinion it is fairly safe to predict also, that the expansion of municipal activities into new fields will take place, if at all, essentially in two directions. Firstly there will probably be a slow increase of those municipal functions in which the great majority of the residents are interested *as consumers*. Cities are not organized to make money profits nor are they generally empowered to do so. Furthermore they have no incentive to make profits because they cannot distribute their earnings to their members as money dividends. As we have said before, quoting the Webbs, cities are in a sense consumers' coöperative societies. Hence cities are not likely to desire to take over factories, mills, wholesale establishments, banks, and other productive agencies within the city limits which are producing goods and services for sale throughout a wide area beyond the city. What they are interested in, and what they will do, is to take over local markets, fuel yards, public utilities, milk distribution, and similar institutions and services of interest to local consumers as such. The organized community in taking over such facilities for public operation seeks only lower rates, or improved service, or both.

But the city government has also an interest in the expansion and prosperity of the city's industries. If it has no reason for taking over any of the basic industries of the community it can at least promote their prosperity indirectly. In fact it is almost compelled to do these things at the present stage of economic development in America. It is a producers' as well as a consumers' coöperative. Thus it may advertise the city, it may build convention halls and support fairs and expositions to bring visitors and conventions of business men to the city, it may help to develop industrial sites, and it may build terminals, deepen harbors and waterways, construct wharves, and do the thousand and one other things which make a city a good place in which to

do business.[34] These activities, be it noted, are of benefit to the people of the city *as producers*, not as consumers, but they are not essentially profit-making. Where profit is fairly well assured, private corporations will usually have entered the field long before the slower-moving city government can decide to act. The functions in this field which are urged upon the city are essentially those calling for large expenditures to be made in such a way as to benefit all the industries of the city without bringing any specific profit into the city treasury.

Whether for better or for worse, then, we must look forward to a future of increased municipal activity. From "abbatoirs" to "zoölogical gardens" the list of municipal functions is already a lengthy one, yet it grows longer every year.[35] The things which we have in common and do in common are multiplying and increasing in importance. From them we gain some of the richest experiences of life. Towards them we have a common responsibility which cannot safely be evaded. It is through these common things that American cities are working, as they see it, to promote that good life for which the state exists. For as Aristotle says, "a state exists for the sake of a good life, and not for the sake of life only." [36] But we need in this connection to remember also Aristotle's words of caution when he was arguing against the complete communism proposed by Socrates, that "that which is common to the greatest number has the least care bestowed upon it. Every one thinks chiefly of his own, hardly at all of the common interest." [37]

It will, therefore, perhaps be not inappropriate to close with a well-known passage from Bosanquet:

"We look forward to a society organized in convenient districts, in which men and women, pursuing their different callings, will live together with care for one another, and with in all essentials the same

[34] Constitutional and other legal objections have been made to some of these activities, such as advertising the city, yet any one who observes the trend of events must see that these things are actually being done. See McBain, *American City Progress and the Law*, ch. 9.

[35] Mr. Charles Zueblin, in his unique and enjoyable volume entitled *American Municipal Progress* (new and revised edition, 1916), has shown much of the sweep and variety of municipal activities. See also C. M. Fassett, *Assets of the Ideal City*, and H. G. James, *Municipal Functions*. An older but excellent work is Milo R. Maltbie's *Municipal Functions*, originally published in *Municipal Affairs*, Vol. II, pp. 577–799, 1898.

[36] *Politics*, Jowett's translation, III, 19.

[37] *Ibid.*, II, 3.

education, the same enjoyments, the same capacities. These men and women will work together in councils and on committees; and while fearlessly employing stringent legal powers in the public interest, yet will be aware, by sympathy and experience, of the extreme flexibility and complication of modern life, which responds so unexpectedly to the most simple interference; they will have a pride in their schools and their libraries, in their streets and their dwellings, in their workshops and their warehouses. . . . What is wanted is the habituation of the . . . citizen to his rights and duties, by training in organization, in administration, in what I may call neighborly public spirit. Unless we apprentice ourselves to the trade of citizenship, the days that are coming . . . may show more disastrous specimens of municipal government than New York itself has displayed. Warnings are not wanting. Such as the citizen is, such will the society be; and the true union of social and individual reform lies in the moulding of the individual mind to the public purpose." [38]

REFERENCES

The whole literature of municipal government bears more or less directly on the problem of functions, for every writer in the field has some interest in what the city has to do. Many periodicals, and still more single volumes, are devoted to technical phases of municipal functions, such as streets, parks, sewerage, water supply, police, fire protection, health, and education. In other works the center of attention is the legal problem of what the city may or may not do and why. Of these we need only mention again the writings of Dillon, McQuillin, Goodnow, McBain, and Pond, especially McBain's *American City Progress and the Law*, New York, 1918. The theory of municipal functions, on the other hand, has nowhere been fully developed so far as the writer is aware, although the Webbs have suggested the outlines of a theory in their various works on English local government.

For the student the more practical and descriptive works will probably be found most useful. Of these the most important to-day is Munro's comprehensive survey contained in the second volume of his *Municipal Government and Administration*, New York, 1923. This volume serves many college classes as a text for a term's work in municipal functions. Much useful material will be found also in the works cited in footnote 35, above. In conclusion, any student who wishes to look up the materials relating to a particular municipal function will get a good start by using Munro's *Bibliography of Municipal Government*, and Upson's *Syllabus of Municipal Administration*.

[38] *Essays and Addresses*, pp. 45–7; quoted in *Pol. Sci. Quar.*, Dec., 1919, Vol. 34, pp. 612–13.

CHAPTER XVII

MUNICIPAL ADMINISTRATION

THE EMERGENCE OF ADMINISTRATION

The capital burgesses of Wisbech in the seventeenth and eighteenth centuries, and the contemporary aldermen and assistants in the colonial cities of Albany, New York, and Philadelphia, had little or no conception of a specialized administrative personnel giving full time to municipal service and receiving adequate compensation for their work. To a slight extent they understood the need of differentiation of function, for they used one man for constable and another for beaconer and still another for fire warden, but the conception of a group of specialists working in local public service as their sole means of livelihood lay far off from them in a misty future. Only when cities grew larger and the demands upon their governments much greater did they even consciously begin to build up permanent administrative staffs.

To-day very few of us realize the extent to which the "universal obligation" of the citizen to serve the public formed the basis of the public services not over a century ago.[1] Indeed very few realize how much of this old conception still lingers in neglected corners of the law. Whence comes the citizen's duty to prevent crimes which he sees about to be committed, to assist policemen in making arrests, to join the *posse comitatus* of the sheriff, to aid in putting out fires, to serve on juries, to bear arms in time of war, or to serve his annual day or two upon the roads in rural districts? All of these and more hark back to more ancient times when the public called on every man to serve his turn for the general welfare.

How did the city of New York, for example, have its public services carried on from the end of the Dutch régime down to 1776?[2] The constables elected by wards, under a high constable appointed by the

[1] Sidney and Beatrice Webb, *English Local Government: Statutory Authorities for Special Purposes*, pp. 355–65.

[2] See Arthur E. Peterson, and George W. Edwards, *New York as an Eighteenth Century Municipality*, 1917.

mayor, with the aldermen of the ward made up lists of able-bodied inhabitants to serve in turn as watchmen in their wards. The constables themselves gave little time to the work, and the office was virtually unpaid, and quite unpopular. Nevertheless the obligation to serve applied to this and other offices, and one could be fined for refusing to accept any office under the city. Watchmen also had to serve, without pay, and could be punished for refusal. Fire protection was upon much the same basis. Each citizen must do his share, even to providing one or more fire buckets. The fire wardens themselves gave little time to the work. There was little regular health work performed. Each resident must prevent nuisances upon his own property and upon the street before his dwelling on pain of being fined. So, too, on a Saturday, and later on a Friday, each resident must sweep into piles the dirt in the street before his house or shop so that the cartmen or scavengers might haul it away, the hauling to be paid for by the citizen himself at set rates. When street lighting became necessary, the houses along each street were grouped in sevens; each seventh house was to "put out" a light upon a pole; and all the householders in the group were to help to maintain it. Even the work of filling up insanitary ditches, of grading, paving, and repairing roads, and of laying sidewalks, was laid upon the abutting owners. These were all but different applications of the same general principle. Compulsory, unpaid, unskilled, crudely organized citizen service, was the rule almost everywhere. At first, at least, there were in local government no full-time permanent paid officials.

That this method of doing public work did not give general satisfaction is only too well known. Its defects are writ large not only in the records that we have of early American cities, but they may be found even to-day in criticisms of township highways and of the jury system. Where every man is obligated to perform a little service with little or no pay, no man makes it his particular business. When we complain of the deficiencies in modern police systems, let us not forget the even greater defects in the watch system of old.

In cities of small population and of slender resources both in money and in experience, it was no easy matter to find a new and better basis for the public services. Many experiments were tried, some only to be given up and then at a later date tried over again. In the hauling away of street dirt, for example, there was resort to the guild of cartmen. Since every householder could not provide his own cart for the purpose, the cartmen were given the right to haul the dirt at so many

pennies per cart to be paid by the householder. But the latter did not like to make these payments and the cartmen did not perform the work satisfactorily. The next resort in New York was to a scavenger who was given a contract to haul away all the dirt for one year for £30 to be paid from the public treasury. Here we have the introduction of the public contractor and of the principle of payment from the corporate treasury. The citizen, let it be observed, is beginning to shift his burden over to the corporation, and the corporation is beginning to develop specialized service by the contract method.

For other services other experiments were tried. In the field of fire protection the volunteer fire companies were organized in many places. The city provided some small sums toward buying equipment and encouraged the firemen in other ways. In some places the companies came to have some social prestige, or perhaps political influence, and thus were kept alive. Elsewhere several companies were organized and a spirit of friendly rivalry was encouraged. For still other services a fee system was developed. Various surveyors, inspectors, weighers, and others were paid upon a fee basis by the person who received the service, so that although the public treasury paid out nothing the officer might nevertheless gain a considerable revenue for slight effort. Sometimes, indeed, his income was out of all proportion to the value of what he did. Then of course he clung tenaciously to his office, while public spirited citizens tried equally hard to bring him under some sort of public control.

Still another group of services was in some places turned over completely to private individuals or companies who promised to relieve the public of all expense and trouble and to perform services for the citizens at charges to be agreed upon. Such were the early water companies, sewerage and drain companies, gas companies, cemetery companies and others.

While these more or less tentative experiments were being made some few offices were slowly being placed upon a salary basis. The records as to this tendency are meager. We cannot say positively which municipal office first became a full time, salaried position, but it is not unlikely that it was the office of city clerk, or some judicial office such as that of recorder. In New England it may have been the schoolmaster who first became a full-fledged local civil servant. Meanwhile attempts were also made in some places to organize permanent staffs of watchmen to be paid from the public treasury. It is probable that some watchmen had become fairly steady workers in this field through

the practice of other citizens in hiring substitutes for themselves on watch nights, but many experiments had to be made before specialized and paid police forces came to be established generally.

What we see in these hesitant steps is a gradual but inevitable process of specialization. The burden of carrying on the civil services is lifted bit by bit from the back of the undifferentiated, unspecialized citizen, and placed upon a small number of civil servants. A few of the latter giving full time and attention to one function could do with ease and proficiency what many citizens had formerly done less well with much effort and grumbling. At the same time the burden of supporting the services is shifted from the citizens to the public treasury, local, state, or national, which must in turn be replenished by taxation. Thus an ample money revenue becomes the *sine qua non* of administration on the new basis, whereas formerly very little actual money was needed since the citizens rendered services directly.

Here then we have the central problems of administration in the larger American cities to-day. In each city there is a specialized staff of hundreds, thousands, even tens of thousands, of municipal employees selected by the city for its work and paid from the city treasury. How are the people of the corporation to keep control over their employees? What relationship shall the council bear to the administration? How shall the entire service be organized? How shall the personnel be selected, trained, paid, disciplined, and removed? How shall supplies and materials be purchased, and contracts be let? What methods of work shall be used? And finally how shall the money be raised, controlled, and expended so as to produce the maximum of results with the least sacrifice on the part of the people? Here are, in short, the problems of organization and control, of men, of materials, of methods, and of means or money.

Let no one think that we are overrating the importance of administration. As one step in the process of government, administration is part of a chain which can be no stronger than its weakest link. But administration is more than a single step. It is the final stage in the process of delivering actual services to the people, and as such is a continuing or repeated series of acts. The council by its original ordinance creating a service and by its annual appropriations to the service, gives the impulse which keeps the work going on; but it is the administration which actually does the work year in and year out. It is administration which consumes by far the greatest part of a city's budget. The expense of local elections, of the council or municipal

legislative body, and even of the local courts, is trivial beside the tremendous outlay on salaries, supplies, materials, and buildings for administration. If the investment of human time and effort be considered important, how can the expenditure of ten or fifteen hours per week by some fifteen or twenty councilmen, be compared to the efforts of some thousands of city employees for from thirty-five to fifty hours per week each? No, it would be difficult to state too emphatically the importance to all citizens of the problems of municipal administration. *Administrer, c'est gouverner; gouverner, c'est régner; tout se reduit la.*[3]

THE CONTROL OF ADMINISTRATION

The people who constitute the membership of the city corporation do not, as we have seen, constitute an entirely homogeneous and like-minded group. It follows that the administration cannot satisfy all groups completely any more than the legislative body can. Even after an ordinance or resolution has been passed, there will be elements in the community who will try to prevent its being carried out. Nevertheless it would seem that we might have agreement upon at least two propositions: first, that the majority should rule and that whatever legal regulations are adopted by a majority of the legislative body should be carried out in good faith; and second, that the administration should be as economical and as efficient as possible. No one but the spoilsman has anything to gain by inefficient or corrupt administration.

An adequately controlled administration would then be one which not only did nothing contrary to local public policy, but which earnestly and intelligently strove to carry out the city's ordinances and public services as the council majority desired. The closest coördination between the legislative and administrative authorities would seem to be called for, and it would also seem that in the relationship between the two the council should be the superior. The legislative department should stand above the administration, directing its work in conformity with legislative policy.

As a matter of fact, however, a great many city charters do not give the council adequate control of administration. On the plea that city councils were untrustworthy, state legislatures of the nineteenth

[3] "To administer is to govern; to govern is to reign; it all comes down to that." The words thus freely translated are attributed to Mirabeau by Matthew Arnold in his essay on *Democracy*.

century set up in a number of cities various systems of administrative organization in which the council had little or no directing power.[4] In some places a number of the chief administrative officers were made elective by the voters and were given power to conduct the work in their departments with little regard to either the council's or the mayor's wishes. This scheme of organization, which is still to be found in some places, conformed also to the popular idea that administration should be "responsible to the people." Of course popular election of administrative officers entails results which almost prevent effective administration. It lengthens the ballot; it encourages boss rule of administrative offices; it produces in some places a succession of short-term office-holders instead of a permanent personnel; it brings amateurs, popular men, into administrative posts; it keeps the administration in politics; and it makes difficult the establishment of harmony and unity in the administration.

Another method of diminishing council control over administration consisted in the establishment of separately elected or appointed boards for the handling of particular functions. Such boards were frequently made completely independent of the council. They could levy taxes, appoint and remove officers and employees, determine their own policies, and carry out their functions in their own way. In cities which inclined to this form of organization there might be found, in addition to the council, one or more of the following: a school board, a park board, a library board, a police board, a board of public works, a water board, and a board of health. Such a multiplication of separate authorities naturally made difficult the carrying out of a unified city programme, yet it had temporarily certain real advantages. It provided a partial relief to the city council at a time when municipal activities were expanding at a rapid rate. Furthermore, in the period of initiation and development such new functions as parks needed the watchful attention and support of a group of men who were especially interested in the problem. In a number of places the boards succeeded temporarily in drawing into public service men of wider vision than their contemporaries in the city council. Furthermore these boards in many cases seem to have recognized the need of permanent expert administrators long before the council did.

The objections to the board system as a permanent system of organization do not, therefore, apply to the temporary use of boards for the working out of new problems and the development of new services.

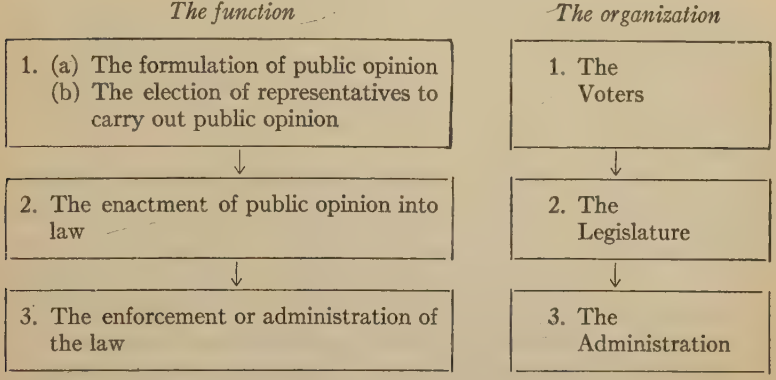
[4] See Ch. XII.

For such purposes cities will wisely continue to appoint new special boards and commissions from time to time. But they will be wise, also, to refuse to make these boards little governments by themselves, and to abolish them as soon as their work becomes essentially a matter of routine administration. From that time on separate boards have little excuse for existence. They stand in the way of the complete unification of the city administration. They duplicate each others' work and increase the expenditures of the local government. They frequently fail to maintain their early high standards in the matter of membership and fall more or less completely under the control of the local party machines.

In the strong mayor plan also the council is to a large extent ousted from the place of controller of the administration and relegated to a position from which it may criticize and scold but in which it lacks full power to make its complaints effective. This plan is founded upon the theory of the separation of powers and it seems desirable, at the risk of some repetition, to speak again of this matter from the point of view of its effect on administration. In the normal process by which representative popular government accomplishes its results, a process outlined in chapter IX, a public opinion is first formed by the politically sovereign people; it is then expressed by the aid of parties in an election of representatives; the representatives meet as a legislative body to enact laws to carry out the public's expressed opinion; and from this point the work is carried on by the administration. The courts act as impartial interpreters of the law, and may be left out of account in this explanation.

In this normal process, legislation, the second important function, is subordinate to public opinion. This truth is sometimes put in these words, that the people make the law, the legislators merely enact it. The legislature is but the general agent of the public. In like manner the administrative function is by nature subordinate to legislation. By the same token, then, the administration should be responsible to the legislature, as the latter is responsible to the voters. If we were to chart the natural organization of government it would appear about as follows:

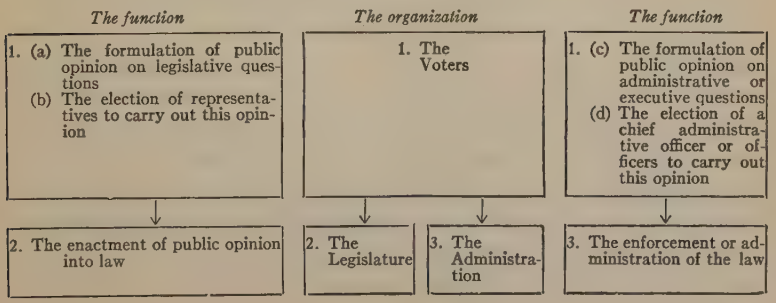
THE PROCESS OF GOVERNMENT, SHOWING THE NATURAL SUCCESSION OF STAGES, AND THE NATURAL SUBORDINATION OF ONE FUNCTION TO ANOTHER


The function
The organization
1. (a) The formulation of public opinion
(b) The election of representatives to carry out public opinion
1. The Voters
2. The enactment of public opinion into law
2. The Legislature
3. The enforcement or administration of the law
3. The Administration

This organization is obviously that which is provided for by the parliamentary or cabinet system of government in the national field and in different ways by council government, the commission plan, and the city manager plan in the municipal sphere. The process goes forward in a straight line, step by step, and it is only reasonable that the organization should be adapted to this natural functioning.

In the American system of presidential government, duplicated to some extent in the municipal field by the strong-mayor plan, an arbitrary change is made in the natural scheme of things. This change a diagram will help to explain.

THE PROCESS OF GOVERNMENT UNDER THE PRESIDENTIAL SYSTEM OF GOVERNMENT (STRONG-MAYOR PLAN IN CITIES) SHOWING THE ATTEMPT TO MAKE THE ADMINISTRATIVE DEPARTMENT THE EQUAL OF THE LEGISLATIVE BY A SEPARATION OF POWERS


The function
The organization
The function
1. (a) The formulation of public opinion on legislative questions
(b) The election of representatives to carry out this opinion
1. The Voters
1. (c) The formulation of public opinion on administrative or executive questions
(d) The election of a chief administrative officer or officers to carry out this opinion
2. The enactment of public opinion into law
2. The Legislature
3. The Administration
3. The enforcement or administration of the law

It is not pretended that this diagram completely depicts the situation. It fails to show that the chief executive officer legally has much legislative authority through his veto and recommending powers, and that through party leadership and the skillful use of patronage he may still further invade the legislative realm. The conflicts which arise are only too well known; and the spectacle is a common one of a chief executive being compelled willy nilly to enforce laws which he has attempted in vain to veto.

Now the obvious effects of such a separation of powers are to increase the work of the voters and to dissipate their energies without increasing their power, to destroy in large part legislative responsibility for administration, to introduce an element of discord into the entire government, to keep the administration in politics, and to keep politicians in control of administration. The voters themselves do not and cannot effectively control administration although they are supposed to do so. Legislative criticism of administration is not the healthy and responsible expression which it could be if the administrative heads were directly in and responsible to the chamber, nor does the administration fully sense the opinions and desires of the public as represented in the legislative body. This lack of coördination is evidenced in financial procedure and in many other ways. Public opinion and the party system exercise perhaps a vague coördinating control over both legislative and administrative branches, but their effect is hard to gauge and there are times when the two branches are opposed in policy yet each claims to be in accord with public opinion.

The question which occurs to us naturally upon the last point is this: Whose function is it to interpret public opinion? Legally this may be done, under a separation of powers, either by the executive or by the legislative body. The separation of powers means confusion of functions. Each branch is supposed to check the other in the same fields of work. Each department is to some extent political or policy determining; each is to some extent legislative; and each is also in part administrative. The result is a seesaw of endeavors, and it is difficult to locate responsibility. "Generally it is good to commit the beginnings of all great actions to Argus with his hundred eyes, and the ends to Briareus with his hundred hands," says Bacon.[5] This separation of functions is just what a check and balance system does not bring about. It gives Argus and Briareus much the same work to do, and makes neither the subordinate of the other.

[5] *Essays*, Of Delays.

There are, however, three plans of city government in which the council is really given control of the administration. These we have called the council plan, the commission plan, and the city-manager plan. They differ among themselves in various ways. The council plan, under which the voters elect only the councilmen and the latter as a body select and control the administrative department heads, has succeeded well in the English cities, apparently for the reason that English city councils have generally appointed only capable administrators, have given them long tenure and honorable salaries, and have actually entrusted them with the administrative work. In the United States, however, under radically different conditions, the plan did not work so well. To-day it is hardly to be found in its pure form anywhere in this country. The writer is not one of those who believes that it ever was a total failure. Under appropriate political and social conditions it affords one of the simplest, most natural, and most flexible types of organization conceivable. It gives the council almost complete control of the administration and at the same time, if the charter be properly drafted, it permits that body to carry on the administration either through a single business manager, or through a cabinet of department heads, or through boards, or in any other way that seems most desirable. It opens the door to a proper separation of functions whenever the council wills it. The difficulty in the past was, in part, that the administrative problems of cities were not fully visualized by legislators and that no adequate provisions were written into city charters to compel the council to practice sound administrative methods.

The commission plan, as we have said before, also puts the council in complete control of the city administration. Its chief defect lies in its failure to separate the function of legislation from that of administration, but it has other disadvantages as well which we have already enlarged upon.[6]

The city manager plan appears, on *a priori* analysis, to come nearest to the ideal in the matter of council control over the administration. While it gives the council complete control it attempts so to regulate this control as to separate the administrative from the legislative function, to insure if possible the appointment of experienced administrators, and to enable the administration to produce the best obtainable results. No one would pretend, of course, that it has produced perfect results in practice.

[6] See Ch. XIII.

Let us recall once more the problem we have in hand. We are not concerned about the council, for it is merely an instrument. The important question is this: How can the people of the city best control the administration so as to have it carry out the will of the majority in an effective and economical way? The local legislative body or council would seem to be the best instrument available to the people for this purpose since legislation precedes and is superior to administration. At the same time council control over administration will not be satisfactory unless the council is truly representative of the people's views. In some way it must provide representation for all important elements in the community. It must include some able people. It must not itself be ruled by an invisible, irresponsible ring. It must have substantially all of the city's departments under its control, and it must have men of training and ability at the heads of the city departments. To the extent that these conditions can be established the council will be an adequate instrument in the people's hands for the control of the administrative departments.

A word may finally be said about the methods of council control over administration. The chief administrative officers should be present at council meetings to answer questions and to hear criticisms of their work. Accounting and reporting systems should be so devised as to give councilmen full and clear information upon all general questions, and the council should have power to call for special reports as well as to conduct its own investigations, at any time. There should be a budget system, with segregation of items, so as to enable the council once a year to reconsider every important service being rendered. These are the principal means by which usable knowledge may be put in the council's hands. To enforce its control it should also have the power to adopt resolutions and ordinances directing the departments to follow certain methods, and if need be to censure or to remove important officials for laxity in their work. These means of control are in part discussed elsewhere, but it is of interest to note in passing that it is only in the city manager plan that the council has all of these means ready to its hand.

LINE AND STAFF IN MUNICIPAL ADMINISTRATION

We come next to the problem of organizing the administrative machinery. No doubt the first question to be answered under this head is whether there should be one integrated system of departments

under one control, or whether there should be several independent governments for different purposes in the same area. This question has already been dealt with in several places and need not be discussed again.[7] The question of whether one chief administrator should stand at the peak of the administrative hierarchy, with all the reins of authority centering in his hands, has also been discussed. The principal development in administrative organization in recent years in both state and municipal government has been the movement toward consolidation of departments and the centering of responsibility in one responsible officer. Under ordinary conditions the advantages to be gained from unity of command whether in military or civil affairs are so great and so obvious that they scarcely need to be stated.

When we come to the question of how many departments there should be, and of how they should be organized and related to each other, we enter upon more debatable ground. With the rapid increase of governmental functions during the nineteenth century there was a tendency in both municipal and state governments to increase the number of administrative departments with little regard to the effect of this expansion upon the administration as a whole. When the demand for a new service arose, such as the demand for parks, or libraries, or a new water or sanitary system, it was but natural and reasonable that there should be an accompanying proposal for a new board and a new department to handle it. This was partly due to a distrust of existing city officers and departments, and partly to a feeling that the council and department heads were already overburdened with duties, and that they were not interested in or informed about the new work. In some cases new boards were created despite the bitter protests of the council; in other cases the council had reached the limit of its taxing or borrowing power and it was necessary to create a new authority with independent taxing power if the new service were to be performed at all. Sometimes the councilmen themselves created new departments. Always in the background were the spoilsmen and the political rings who were in no sense averse to the creation of new offices and departments if they could help to make the appointments to fill them.

Apparently it was not at first observed that these many departments were duplicating many of each others' activities, and that this duplication was particularly extensive in the case of the independent boards. Each of these departments was created to accomplish a certain end,

[7] See Chs. V, XII, XIII.

that is, to give some service directly to the people. Of one the end or purpose was parks, of another schools, of still another police protection, or public works, or water supply. In other words *the end to be served* was made the basis for the creation of new departments, and not the nature of the work or the means to be used. The result was that there would commonly be a separate department, and in many cases a separate board, for each end to be accomplished. This we may designate the *vertical* division of the city's work, or the division according to ends, which is still the most common method of apportioning out the work. Under the board system of control it resulted in making many departments almost completely independent and self-sufficient.

At a later date, and more clearly since 1900, it began to be observed that this method of organization was not the most orderly and economical that could be devised. To a certain extent each department had to use the same sorts of means and to do the same kinds of work. Each department needed the help of men,—clerks, accountants, laborers,—and each had its own policy and methods of recruiting and of paying its help. Each department needed supplies and materials, and each bought them in its own way and at the most divergent prices. Each needed legal advice, yet in many cities the central legal department had no connection with some of the independent boards. The latter engaged their own legal talent. In fact each department had to supply itself with many or all of its "staff" services, legal, financial, and material. The result was much duplication of work and undoubtedly some waste of public funds. In the circumstances it was impossible to get reliable comparative cost data or to know what each department was doing. Uniformity of standards was of course out of the question.

About the time that it came to be clear that there are a number of staff functions each of which can best be performed by a single department for the entire city government, a number of movements were already under way for the creation of such agencies. Among the earliest of these movements seems to have been that to establish a central city treasury to receive, disburse, and account for all funds belonging to the city. In some cities this major administrative reform has not yet been brought about. Later came the movement for a single personnel agency, called usually the civil service commission, to establish the merit system and uniform standards for the recruiting and control of the employees in all departments. Still later came the general movement for central purchasing departments to buy munic-

ipal supplies. Other similar movements, familiar to all, have centralized the staff functions of record keeping, legal advice, engineering and architectural plans, budget, and various others.

This redivision of municipal functions is one of the most significant of recent developments in municipal administrative organization. It is a notable evidence of increasing attention to the problem of administration. The new departments created are not ends or "line" departments. They give few if any services directly to the people. Instead they supply and control the means which the line departments must use in their work. Records, men, money, materials, legal, engineering, and architectural advice—these are not ends in themselves but only means for accomplishing ends. The immediate ends of municipal government are education, police, fire, and health protection, public works and other services which redound directly to the benefit of the people. The older departments still pursue these ends; the new ones relieve them of former duties by supplying and regulating the means. The newer departments represent a new *horizontal* division of the city's administrative functions. This division is based upon the *means to be used* or the nature of the function to be performed. The differences may perhaps be illustrated, however inaccurately, by the two simple diagrams on the following page.

In all that has been said it is not implied that city departments ever were entirely organized on the vertical plan, or that very many of them were ever entirely self-sufficient. There was, however, at one time a general tendency in that direction. Neither must it be understood that today cities are entirely overthrowing the vertical plan in favor of the horizontal, for that would be virtually impossible. A combination of the two is called for. What we do intend to say is that there is a modern tendency to take away from the "line" or "ends" departments many of the functions relating to the provision of means, and to vest them in new "staff" or "means" departments which can serve all the departments of the city better than they can in that particular serve themselves. One central purchasing department can do better purchasing for the entire city government than can a number of minor employees scattered among many city offices each acting only for his own department. Centralization of such functions means specialization, the apportionment of duties according to the nature of the work to be done. It also serves to integrate the departments, to make each one more definitely a part of the whole organization. It helps to standardize printing, stationery, building plans, and the treat-

THE OLDER VERTICAL DIVISION OF MUNICIPAL FUNCTIONS AMONG DEPARTMENTS
(Division according to ends)

Dept. of Education	Dept. of Parks	Dept. of Police	Dept. of Water Supply, and Others
End: to provide schools	*End: to provide parks*	*End: to afford protec'n*	
Functions:	*Functions:*	*Functions:*	
A. Means:	*A. Means:*	*A. Means:*	
Personnel	Personnel	Personnel	
Law	Law	Law	
Records	Records	Records	
Finance	Finance	Finance	
Budget	Budget	Budget	
Accounts	Accounts	Accounts	
Purchases	Purchases	Purchases	
Buildings	Buildings	Buildings	
Plans	Plans	Plans	
Etc.	Etc.	Etc.	
B. Ends:	*B. Ends:*	*B. Ends:*	
Actual	Actual	Actual	
educat'l	park	police	
work	work	work	

THE NEWER DIVISION OF WORK, PARTLY VERTICAL, PARTLY HORIZONTAL
(Some departments providing means, others effecting certain ends)

A. Staff or Means Departments

Functions: to provide means for other departments as follows:

1. Personnel Dept. (Civil Service commission.)
2. Legal Dept. (Corporation counsel, or city attorney.)
3. Dept. of Records. (City clerk, election board, etc.)
4. Dept. of Finance, Taxes, etc., with bureaus or divisions for
   a. The budget
   b. Accounts
   c. Purchases (sometimes separate.)
5. Dept. of Bldgs. and Grounds.
6. Dept. of Engin. and Architecture, and City Plan. Comm'n.
7. Other Staff Depts.

B. Line or Ends Departments

Functions using the means provided by the staff departments noted above, to provide the actual services to the people for which the city government exists, to wit:

Dept. of Education	Dept. of Parks	Dept. of Police	etc.
Actual educat'l work	Actual park work	Actual police work	

ment of municipal employees. It relieves the "line" departments of duties and expenses which formerly consumed much of their time and revenues, and leaves them more free to devote themselves to the problems which are peculiar to them. They also may specialize more completely.

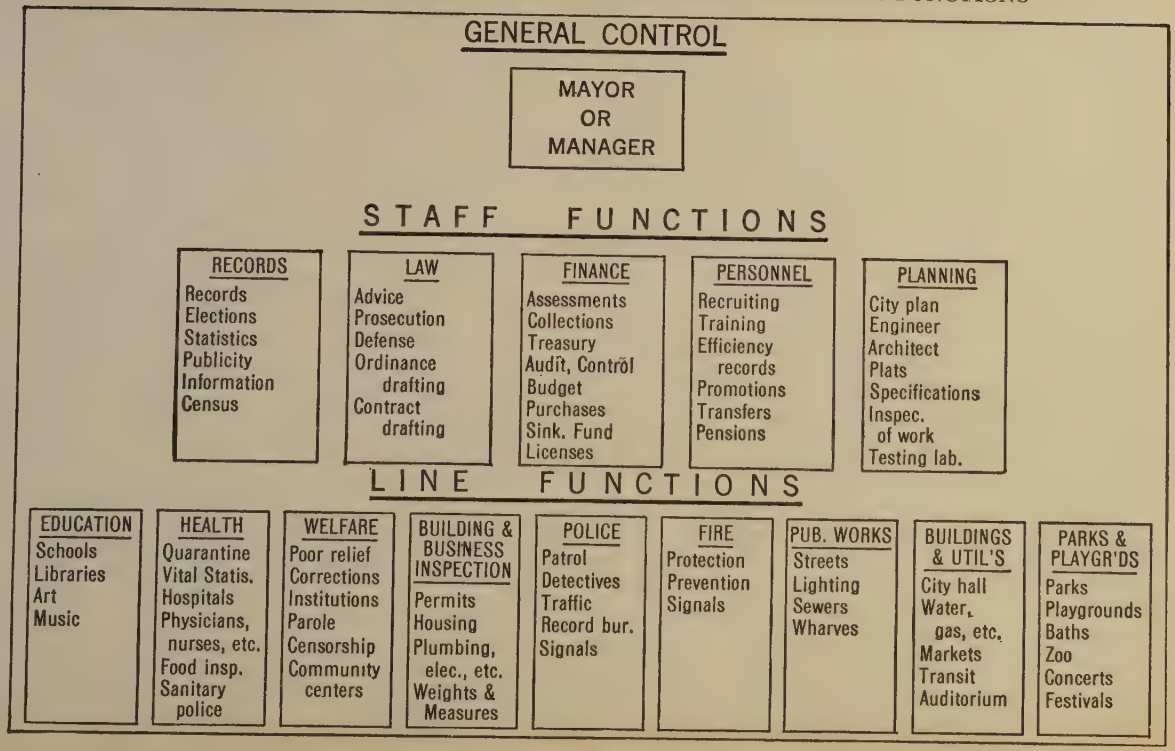
But it must not be understood that the old departments have all willingly given up the right to purchase their supplies, to hire their employees, and to settle their other problems to suit themselves. School boards have been especially opposed to coming under any overhead departments, and other branches too have made objections. They have struggled to retain their old independence. They have

argued that their own problems are peculiar. They have objected to the red tape involved in the new method which makes them apply to one department for supplies, to another for new employees, to another for building plans, and to another for budget forms.

It must be admitted, too, that there is bound to be some difficulty at first in working out proper relationships between staff and line departments, and in developing a simple and effective routine. Furthermore the staff departments will be primarily interested in economy and efficiency, rather than in the service to the people being rendered by the line departments. They may become sticklers for the enforcement of their rules. This diversity of attitude may lead to frequent conflicts. On the whole, however, in the present stage of American municipal development the new tendency seems to be not only necessary but also positively good. It will compel line departments to plan their work farther in advance, to make more careful estimates of their needs, to live within their appropriations, and to do many of the other things which make for good administration. We look forward then to a day when each large city will have two distinct groups of administrative departments, staff and line, as suggested in the diagram on page 438.

The diagram herewith presented suggests a few observations. It will be noted that the staff departments, as the term implies, devote themselves to the keeping of records, the planning of work, the providing of means, and the exercising of such general control as has been intrusted to them. Their work is mainly not in the field but in the office. They do not do the work of the city themselves, but they assist in planning and directing it and in regulating the flow of means by which the line functions are carried on. The nature of their functions is such that they do not require nearly as large appropriations or as many employees as the line departments. Neither do they require expensive buildings or much equipment. In the city of Minneapolis, where the administrative staff agencies include a civil service commission, a city planning commission, a board of estimate and taxation, and the offices of the assessor, comptroller, treasurer, city clerk, attorney, engineer, and purchasing agent, the appropriations for all of these combined have not greatly exceeded two per cent of the total maintenance budget. Street lighting expenditures alone considerably exceeded the expense of all these general staff agencies. Even if the appropriations for the council, for the mayor's office, for the municipal court, and for maintenance of the city building were included, the

A SUGGESTED GROUPING OF MUNICIPAL ADMINISTRATIVE FUNCTIONS



total for all general overhead expenses would not reach four per cent of the total maintenance appropriations.

But the relatively small sums expended on the staff departments should not close our eyes to their real importance. Many a city could well afford to spend more money upon them and to give them more extensive powers and functions. If they were to be abolished, and their work to be split up among the other departments the city would suffer incalculable loss. It would probably be paying out more money to have the same functions performed, it would lose the chief advantages of centralization and specialization, and it would also lose one of its principal bulwarks against spoils and inefficiency.

There is one function of a general staff nature of the greatest importance upon which cities spend directly little or no money. This is the function of research. It is true that some city departments of education have paid a little attention to this matter in their own field, and it is also a fact that special council committees and other temporary bodies sometimes engage in the work of investigating subjects like municipal ownership of utilities, the proper organization of public markets, and zoning. In this connection should be mentioned also council committees on economy and efficiency and the municipal reference libraries which some cities have seen fit to establish. But all of these activities combined do not really reach the mark. Not only for the improvement of administration, but also as a guide to policy, it may be suggested that large cities need to provide "for the organized acquisition of facts and information, and for the systematic application of thought." [8] Governments cannot operate at their best without the complete organization and utilization of knowledge. Those who doubt the value of an expenditure upon such research work might well study a few pages in the recorded experience of American private industry. There are, of course, many private research agencies, foundations, and scientific societies doing research work in the field of administration, but it is no stricture upon their services to say that they do not wholly cover the ground. The city needs its own searchlight constantly playing upon its own administrative machinery and upon that of other cities. The fact that spoils politicians are opposed to such agencies is one of the best reasons for creating them, and for keeping them as free as possible from spoils influences.

The line functions illustrated in the diagram above fall naturally into two groups. The first of these includes the functions of educa-

[8] *Report of the Machinery of Government Committee* (England), 1918, Cd. 9230, p. 6.

tion, health, welfare, and police, with some phases of the regulation of business. In these departments the primary interest is in social problems, the safety, education, and well-being of men, women, and children. The knowledge required lies principally in the fields of education, the social sciences, and medicine. Since knowledge in these fields is at best incomplete and tentative; and since the human material is always hard to handle and particularly difficult to improve, these departments have an exceedingly hard task and are constantly under public criticism no matter how well they function. The needs of these departments, aside from more knowledge of their problems, are *first* a large number of capable and tactful workers—teachers, health officers, hospital attendants, social workers, and policemen; and *second* large appropriations for institutions, since much of the work in these departments is the institutional care of the uneducated, the sick, the poverty-stricken, and the delinquent.

The second group of line functions includes fire protection, water supply, public utilities, sanitation, streets, and parks. While the corresponding departments cannot ignore the human factor in any case, their main problems are nonhuman. They must deal with land, buildings, machinery, and commodities. Their problems are largely of an engineering character; the knowledge which they require lies very largely in the fields of the physical sciences and business management. It is, therefore, possible for most of these departments to secure good results with much greater certainty than is possible for the first group of line departments. They come under less criticism from the public, and the most frequent charge against them is not that they have done poor work, but that they have been wasteful. They employ large numbers of laborers and mechanics, need much machinery, and utilize large quantities of materials.

Many difficult questions arise in the adjustment of the relationships between line and staff departments. In the course of a year every line department may have to have some dealings with each of the general staff departments. They send requisitions for supplies to one, for new employees to another, and so on. It is obvious that the staff departments are in large part service agencies. They have no control over policy, no power to command line departments to do one thing or to refrain from doing another. All line departments should be responsible to one central controlling authority, such as the council, the city manager, or the mayor, but it would be a violation of sound principles to make them responsible to another master as well. The

staff departments exist in part to serve as checks upon bad business practices in line departments, but in exercising this restraining influence they should stay strictly within their prescribed powers. If the parks department, for example, sends a requisition for supplies after its appropriation has been used up, it is the controller's duty to refuse to honor the requisition and to give notice to that effect to the purchasing department. If the head of any department tries to appoint any subordinate in violation of the civil service regulations, the civil service commission is in duty bound to refuse to honor the payroll as to such employee. These are but illustrations of the sort of checks which staff departments exercise upon the line departments and upon each other. As these checks are brought into operation there will naturally be a good deal of inter-departmental friction.

The experience of American cities does not reveal any sovereign remedy for distrust and lack of coöperation between departments. If the tact of the chief executive and the good will of the department heads do not suffice for the purpose, an occasional removal may have a healthy influence. It has been suggested, however, that cabinet conferences between the chief executive and his department heads might serve not only to end misunderstandings and to build up a better *esprit de corps*, but might also have a much wider usefulness. They might serve greatly to enlighten the chief executive, and to help him in working out plans and proposals to be laid before the council. Such conferences should not, of course, be formal and need not be regular. The conferees should not have the power of decision, which must be left to the chief administrator, nor should they take up directly any matter of contention between two departments. They should rather aim to break the ice of prejudice and to give the department heads important contacts and even friendships. They would be useful if they never discussed a single important question.

THE NUMBER OF DEPARTMENTS

As we work into the problem of administrative organization we come to the question of how many departments there should be. A municipal administrative department may be defined as an organization (including officers, employees, equipment, and powers) which handles one of the major branches of city administration, and the head of which stands directly under the chief executive officer of the city, or is responsible to some separate board. Any organization which has a lower rank than this would be termed a bureau or a division.

The pressures so frequently exerted upon city councils, charter commissions, and state legislatures, to increase the number of city departments and boards have already been referred to. These pressures are felt from time to time to-day as always, but it would appear that they were more frequently successful before about 1900 than they have been since. The movement for simplification and consolidation has appeared in city as well as in state government, and has been given a powerful impetus by the movements for commission government and for the city manager plan. Nevertheless much more work needs to be done, for the proper organization of the administrative machinery is a prerequisite to the best administrative results.

Under the commission plan of government the number of administrative departments was generally reduced at one sweep to four, five, or six. Where this arbitrary reduction was made effective it came generally as a more or less disguised blessing. It brought about an administrative consolidation in many cities such as the states have generally had to achieve at great pain or perhaps not accomplish at all. Under the Dayton city-manager charter provision is made for five regular departments under the city manager (law, public service, public welfare, public safety, and finance) and for a civil service board appointed by the council. Other city-manager cities also tend to have a small, wieldy number of departments, but of course they are in the main not large cities.

In the cities both large and small, which operate under the strong-mayor or some older plan of city government, there are usually more departments than under either the commission or city-manager plan. While it is difficult to give precise figures because of complexities in organization, New York appears to have about thirty separate departments or separate agencies of other names, Chicago about the same number, Boston about forty, Detroit twenty-two, San Francisco (city departments) about twenty, Los Angeles (new charter) about twenty-seven, Minneapolis over twenty, and so on. However, a few large cities have smaller numbers, notably Philadelphia which provides for only eleven in its charter, and St. Louis which provides for twelve but authorizes four more to be established by the council.

Not only is there great diversity in the number of departments, but there is equal variation in their importance. Los Angeles has a separate department dealing with the "humane treatment of animals," and it also separates parks from playgrounds and recreation. In Boston may be found a department of "registry," for keeping vital

statistics, and a department of "statistics," in addition to a city clerk's office. There, too, the schoolhouse department is separate from the regular school committee, and a department of "vessels and ballast" is provided for, although its officers must get their income from fees. We do not need many such illustrations to realize that every city has had its own political history, and that it is perhaps neither desirable nor possible to force them all into the same mold.

At the same time there are a few principles which might well be used to guide charter framers. Presumably small cities will require fewer departments than large ones, for as a rule the number and the importance of functions increase with the size of the city. Furthermore a city needs to ask itself how many fully trained and capable department heads it can afford to employ. In many cases, no doubt, one man of outstanding ability could manage two closely related departments as a unit better than two poorly trained men could manage them separately.

But the size and financial ability of a city are not the most important tests. The central thought should be not to subdivide the work of the city as much as possible but to combine in one department functions which are similar to each other in the type of work to be done. The purpose of the work cannot be always the controlling test. Thus a sewage system promotes health, and so does a health department, yet the two are wholly unrelated in other respects. One is an engineering problem; the other deals with medical inspection, quarantine, and hospitals. On the other hand the sewerage problem is closely related to that of the construction and improvement of streets. It would be absurd and wasteful to have one department for grading the streets, another for placing the curbs therein, another for laying sidewalks, another for laying the sewer mains, and so on. These functions can usually be handled best by one department with several divisions.

While there may be some temporary advantage to be gained in providing a new department to handle a new function, a relatively small number of important departments will probably in the long run be more successful in handling established functions than will a large number of less important ones. The number should, in fact, be kept small enough to make it possible for the chief executive to know well all of his department heads, and to meet them from time to time in conference. Ordinarily this number should be not over fifteen, although in exceptional cases a slightly greater number might be desirable. While no final decision as to the number of departments

for any city can be made without a careful survey of local conditions, the chart already given suggests a fairly natural grouping of functions which keeps the number of departments well within the limits suggested.

THE USE OF BOARDS FOR ADMINISTRATION

We have found that cities differ in the numbers of their administrative departments. They differ also in the forms which they give to departments. One city puts parks under an independent board; another puts them under the council or mayor or both but has a subordinate board for administration; a third has a single commissioner of parks appointed by the mayor or the manager or elected by the voters and designated by the city commission.[9] We have previously dealt with boards of the practically independent type, that is to say, those which exercise a combination of legislative, financial, and administrative powers, and which practically constitute separate governmental corporations.[10] While we cannot always draw the line between these and others, there is another class of boards to be found in American cities,—boards which are usually appointed instead of elected, and which have relatively less power to determine questions of policy and practically none to set their own appropriations. Municipal administrative departments even when under a mayor or manager will be found, then, to fall into two major groups, namely, those which are headed by administrative boards, and those which are headed by single individuals called directors or commissioners or superintendents.

A municipal administrative board may be defined as a group of persons who are made jointly responsible for the administration of some municipal line function. Of somewhat different character are such staff agencies as city-planning commissions, which have usually little or no administrative work to do, civil service commissions, which have quasi-judicial and sub-legislative functions, boards of equalization of taxes, and boards of estimate and apportionment. Boards of the latter type hire few workers directly, they generally let few important contracts, and they are not essentially administrative in the ordinary sense.

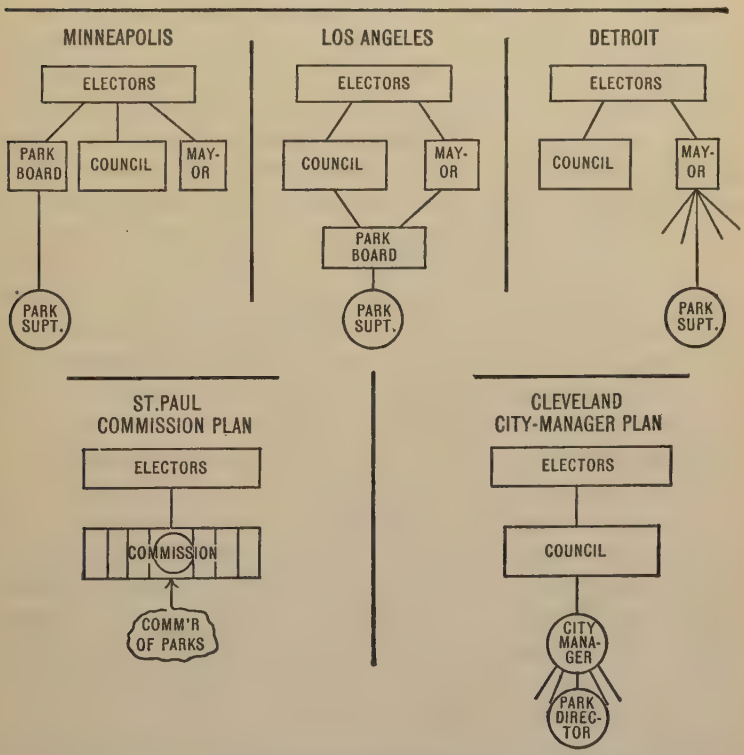
Whoever looks carefully into the charters of American cities will no

[9] The following diagrams (on p. 445) give some idea of the variations in park organization in representative cities.

[10] See especially Ch. V.

doubt be surprised to find the extent to which boards and commissions are used for carrying on the work of the city. New York has at least a dozen without counting certain state authorities, Chicago has at least nine exclusive of the many district park boards, Philadelphia has four, Detroit eleven, St. Louis eight, Boston nineteen (1922), while

ORGANIZATION FOR PARK CONTROL IN FIVE REPRESENTATIVE CITIES



Los Angeles has provided for nineteen under her new charter, and San Francisco has at least sixteen. Smaller cities, too, make very extensive use of the board system for many purposes.

The 1918 charter of Detroit and the new charter of Los Angeles show the most notable developments in the matter of board administration. In each of these cases there is evidenced a conscious effort to turn some of the most important administrative departments over to appointed boards. Detroit has an *ex officio* election commission, a

civil service commission, a board of assessors, a city plan commission, a public lighting commission, a board of water commissioners, a board of street railway commissioners, a board of health, a board of fire commissioners, a public welfare commission, an arts commission, and a board of commissioners of the house of correction, and formerly had also a recreation commission. Most of the Detroit boards consist of four members, and are unpaid. Los Angeles provides in its new charter that the following departments "shall each be under the control and management of a board of five commissioners:" building and safety, city planning, civil service, fire, harbor, health, humane treatment of animals, library, municipal art, parks, pensions, playgrounds and recreation, police, public utilities and transportation, social service, and water and power. The members of these commissions receive five dollars per meeting. There is also a housing commission of fifteen members, a board of trusts commissioners of seven members, and a full-time, salaried board of public works, of five members, which is perhaps the most powerful of all. In fact Los Angeles has gone the whole length of putting every important line activity under an appointed board. Detroit refused to go the entire way, as is evidenced by the fact that she kept public works, parks and boulevards, building inspection, and police under single heads, and soon after amended her charter to put recreation also under one commissioner.

The boards in Detroit and Los Angeles are fairly uniform in size and their members are practically all appointed by the mayors. As we look over the charters of other cities, however, we find an almost inconceivable diversity in practice. There are large boards and small boards, elected boards, appointed boards, *ex officio* boards, and mixed boards, boards with short terms and boards with long terms, boards with overlapping terms and boards without, paid boards and unpaid boards, boards whose members give full time to their work and boards which meet infrequently and do their work through a paid secretary and staff. Some boards are merely advisory; some have semi-legislative or semi-judicial powers or both; and some are primarily administrative. Some head entire departments and others are merely subordinate parts in their departments. In the face of such a mass of heterogeneous facts, and without adequate reports as to the results of board administration, we must be very careful not to draw any final conclusions.

Many years ago Jeremy Bentham and at a later date John Stuart Mill used strong terms in their attacks upon the board system of ad-

ministration.[11] American writers seem to have devoted little thought to this subject, while in England and on the continent of Europe municipal administrative boards are so infrequently met with at the present time that there the matter has hardly merited attention in recent years.[12] The general trend of thought seems, however, to favor the single administrator for work which is truly administrative.

If we were to attempt a summary of the arguments for the board system it would run somewhat as follows: American cities are growing rapidly and are as rapidly increasing and extending their functions. For these reasons a great deal of detailed planning is needed, far more than the council itself can do. The power to decide many important questions must be devolved upon some one, and had better be delegated to a group of men than to a single individual. The group can gauge public opinion and public resources better than any individual; it can be made to include leading citizens as well as some specialists who are willing to give a little time to public service; it can have an unbroken life and follow out a definite line of development over a series of years. Its policy will be steadier, less fluctuating, than that of a series of single department heads. It will be more free from sinister political influences. It will serve through its membership to give many men and women a training in the responsibilities of citizenship, and will serve to get a larger public acquainted with the work of the particular department. It is sometimes said, also, that the board system saves the city money. To the political boss or ring the board system gives an advantage in that it provides many additional places to be filled, places which carry honor, or a little pay, or perhaps a chance for the incumbents to "make something" for themselves.

Careful analysis of these arguments reveals that they are not much different from the arguments for having a number of separate authorities to handle different municipal functions independently of each

[11] In his slashing attack upon boards, Bentham was really considering the relative merits of the contract system as a means of caring for prisoners, and the system of institutional care under board management. See his *Panopticon, Postscript*, Part II, in Bowring's ed. of his *Works*, vol. 4, especially pp. 125–134. Mill, on the other hand, was really thinking of the problem before us, namely that of the single head versus the board in the administration of public services. *Representative Government*, ch. 14.

[12] In many German cities a large number of citizens are drawn into public service through the so-called *Deputationen*, especially in the work of poor relief. It would appear, however, that these deputations are not really boards in the American sense. See Munro, *The Government of European Cities*, pp. 197–205.

other. They stress the value of boards for the making of policies and for "planning the work" rather than for administration, which is "working the plan." It reminds us again of Argus and Briareus. Now the need of delegating to boards the power to determine policies is not so great in cities as in state and national governments. Many of the really important policies of cities are determined for them by their charters and by state laws. In a word the state legislature or the charter board is in some respects the chief legislative body of the city. Even the city council has very largely only a higher sort of administrative work to do. If, then, important local policies must be determined the function can be left to the council. A city council is in constant contact with the problems of the city and with its constituency. It may meet frequently and it may organize special committees for special problems. Besides, there is need of unity in planning the work of cities and this cannot be attained by having a number of separate boards to make plans for different functions. Only by keeping the boards under the strict control of the council can this unity in planning be accomplished, but this means depriving the boards of policy-making power and making board membership less attractive to able men. This destroys two of the principal arguments for having boards.

As a matter of fact there is little evidence now available to substantiate any of the arguments for the board system. Boards fluctuate in membership, change policies, and fall under political influences in just the same way that single headed departments do, and in some cases at just as rapid a pace. If they are to be prevented from doing these things it can be done only by giving board members very long terms and providing for their election by a special electorate or for their appointment by some officer who is himself removed from local political influences, if such a one can be found.

Some of the arguments for administration by boards rest upon the assumption that boards themselves carry on the administrative work. Thus it is sometimes said that since board members serve without salary they save the city the expense of a department head. In cities of any considerable size this is obviously not the case if the department is of an administrative nature. A park board hires a park superintendent, a library board employs a librarian, and so on, because in each case there is so much routine administrative work to attend to, which must be attended to from day to day and even from hour to hour, that no board could possibly accomplish it.

Moreover, when a board does hire a chief administrator it frequently pays him more than the council would pay for the same position, although it must also he said that it just as frequently gets a better man than the council would have engaged. This is due to the fact that the members of any board, immediately upon appointment or election, get an exaggerated view of the function they have in charge. The writer has heard it seriously argued that parks are more important than schools, and by others that schools are more important than all the other functions of the city combined. The result is that each board handling a line function, without regard to the needs of other departments, presses constantly for increased appropriations, and that the added prestige and influence given to a department by the board at its head usually makes it possible for the board departments to get the lion's share of the appropriations as against departments headed by single individuals. It is a matter of observation that, far from being money-savers, boards are great spenders. This may not be wholly unfortunate at a time when a new function is being established and the city is rapidly growing and prosperous, but when the time comes for the city to begin to count its thousands and even its hundreds of dollars, then a halt needs to be called on the boards.

It is not irrelevant to note that apparently only one large city has yet so fully accepted the logic of board administration as to provide in its charter for boards in every line department. We refer to the new charter of Los Angeles which will go into effect in 1925. On the other hand a considerable number of cities have, in so far as lay within their power, abolished all boards in the line departments and have put single heads in their places. This is the usual situation in the commission plan cities and to almost the same extent is true under the city manager plan. There is no evidence available to show that these cities have lost anything of great value through the abolition of boards, and there is much to indicate that their administrations have become more flexible, responsive, and effective since each department was put under one man control.

We do not need, perhaps, to subscribe to Bentham's saying that "Every board is a screen," [13] for certainly there are many situations in which boards render responsive and valuable service. In advisory capacities, in working out plans, in formulating rules, the special attention of a group of men for a period of months or years may be highly desirable. Such has certainly been the case with civil service

[13] *Works*, Bowring's ed., 1859, III, 571, note.

commissions and with city planning commissions. Boards may serve well, also, in the reviewing of tax assessments, in conducting investigations of alleged maladministration, and in holding hearings upon the proposed removal of officials. Whether their findings are actually more impartial in such cases than would be those of a single judge on the bench is an open question, but at least the parties involved usually have greater confidence in the fairness of a board than in that of an individual.

But in actual administration a board usually does little of great value. The best board is the one which most carefully selects its business manager and leaves the most to him. Many a superintendent of schools is "board-ridden." When the board dabbles in administrative work it is generally outside of its proper field. "As a general rule, every executive function, whether superior or subordinate, should be the appointed duty of some given individual. . . . Responsibility is null when nobody knows who is responsible." [14]

The writer will not, then, be understood to advocate the immediate abolition of all municipal boards. Our knowledge of the value of the board system is as yet but tentative. But if a city had reasonable assurance that it could get and retain a group of able department heads and could protect them from undue political interference, then it could probably make a considerable gain in efficiency by abolishing the boards in the line departments.

THE ORGANIZATION OF DEPARTMENTS INTERNALLY

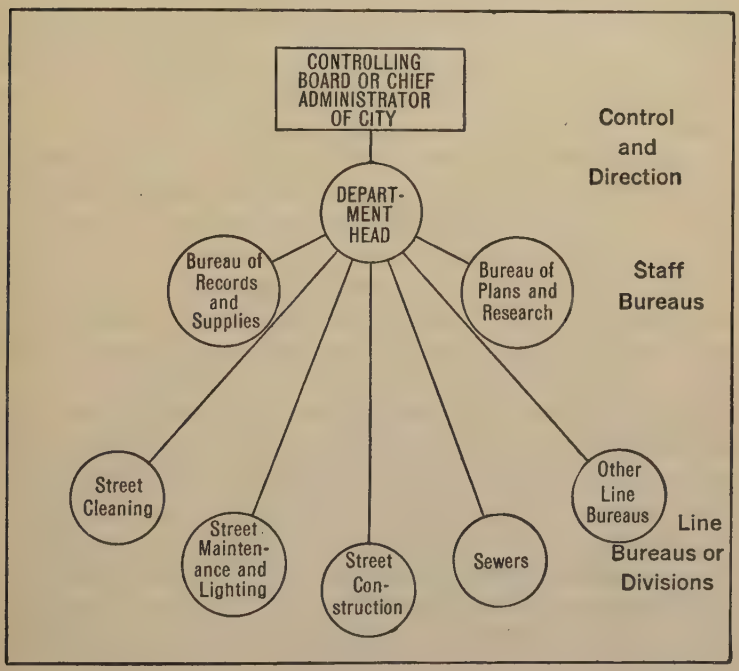
We come finally to the problem of the internal organization of municipal administrative departments. This question need not detain us long. There are a few principles which are generally recognized although not always observed in practice. The first is that a single individual should stand at the head of the administrative work in each department, and should be exclusively responsible for it. This is true whether a board exercises general control over the department head or not. A corollary of the first proposition is that every person in the department should be ultimately responsible to the head, and that the lines of authority should all run from him downward, clearly and without a break, to the least important employee on the departmental payroll. Independence is frequently an excellent thing in legislators,

[14] Mill, *Representative Government*, Ch. 14.

but is seldom so in the case of minor administrative officers and employees. The hundred hands of Briareus need to be under the control of one brain, and to function in complete harmony.

A second general principle is that the work within the department should be apportioned among bureaus or divisions according to its nature. Here we simply apply the rule already stated for the division

INTRA–DEPARTMENTAL ORGANIZATION



NOTE: A department of public works is here used by way of illustration. If the city in question had a central staff department for engineering and architectural plans, there would, of course, not be much work for a "bureau of plans and research" in the department of public works.

of work among departments in the entire city administration. The grouping of functions according to their nature permits of specialization, and also helps to concentrate responsibility for the proper performance of duties. The number of bureaus, furthermore, should be small, and there should be clear lines of distinction between them. As in the case of the whole administration, a single department may also

need to distinguish between "line" and "staff" functions, for in spite of all the centralization of general staff functions in a few overhead departments, each department will still have left a few staff functions which are peculiar to it, and which will call for staff work within the department. For example, research in education or in any other line can be handled best by the department directly concerned. Furthermore there are always certain purely intra-departmental records which could not be kept to advantage in a central record office, but must be kept by the department immediately concerned. The records of school attendance must be kept by the department of education, of books circulated by the library department, of fire-calls received by the fire department, of arrests made by the police, and so on.

If the suggested distinction between staff and line functions were made, a typical departmental organization chart would be somewhat as shown on page 451, although it is clear that no two departments would be exactly the same.

Here, as before, we need to remember that the staff is to *serve* the department head and the line bureaus, but is not to issue orders to them. Instructions and orders must come from the department head himself. He may reject staff plans and recommendations at will, or he may modify them in any way he sees fit before sending them on to the line divisions or bureaus for execution. Only in this way can the department head be made solely responsible, but even this is hardly enough. Bureau heads and other inferiors should make no budget requests directly of the budget bureau, but only through the department head. Everything which in any way affects departmental policy should somehow clear through him. He may need, also, as we suggest later, a power to remove his subordinates, as a means of sustaining his authority.[15]

REFERENCES

The books pay much attention to the problem of the relationship of the council to the administrative branch of city government, and much also in recent years to that of improving the methods or processes of administration. Relatively little has been written, however, about the internal organization of the administrative branch. Professor Munro has a good chapter on the subject (*Municipal Government and Administration*, vol. II, ch. XXIII) and there is much instructive material in the chapter on "Administrative Organization" contributed by Professor Herman G.

[15] See pp. 492–494.

James to Woodruff's *A New Municipal Program.* Attention should be called also to the following: Henry Bruère, *The New City Government*, New York, 1921; Morris L. Cooke, *Our Cities Awake*, New York, 1918, especially chapters XVII and XVIII; and *The Annals* of the American Academy of Political and Social Science, vol. XLI, whole no. 130, May, 1912, entitled *Efficiency in City Government.*

Material descriptive of the existing administrative organization of many cities can now be found with ease. Special attention may, however, be called to such carefully made surveys as those of Rochester, New York, and of the city and county of San Francisco, made by the New York Bureau of Municipal Research, and published in 1915 and 1916, respectively, and to the more recent survey of *The Government of Cincinnati and Hamilton County*, edited by Lent D. Upson, 1924.

Municipal charters, state laws on municipal matters, the reports of city departments, municipal yearbooks, and even budgets and financial statements frequently throw much light on the organization of departments.

CHAPTER XVIII

THE MUNICIPAL CIVIL SERVICE

I. General Problems and Recruiting

MERIT SYSTEM VS. SPOILS SYSTEM

The history of the American civil service problem, national, state, and local, gives us an excellent illustration of the inability of governments to foresee problems and to ward off evils. Even in colonial days our cities and boroughs had the beginnings of a civil service problem. The state and national governments had some regular civil employees from the time of their establishment during and after the Revolution. Then throughout the nineteenth century the length and importance of civil payrolls kept increasing. There was a steady shift away from compulsory unpaid citizen service toward a new system in which the specialized, full time, salaried civil servant became the real performer of the public functions. So rapid was the rise of civil employment that to-day the number of civil employees, national, state, and local, is variously estimated at from two to over three million.[1] New York is reported to have nearly a hundred thousand full time paid employees. Smaller cities have relatively fewer, except where they own and operate extensive public utility systems, as in Detroit and Seattle. In any case the payroll takes a large part of the annual appropriations, probably not less than forty per cent on the average. Every city of size numbers its teachers, policemen, firemen, clerks, mechanics, and laborers, by the hundreds if not by the thousands.

During the entire period in which these great staffs of employees were being built up, responsible public officials must have been in-

[1] See the *National Municipal Review*, Vol. 12, p. 443, August 1923, for various estimates. Exact figures are not available. The cities of 25,000 or more inhabitants each, with a total population in 1920 of over 37,000,000, probably had at that time upwards of 600,000 regular employees, including teachers, plus some tens or hundreds of thousands more of casual, seasonal, or part time employees. A city which does much work by the direct system naturally has a considerable increase in its staff during the busy summer months.

creasingly conscious of the new situation, yet nothing definite was done to plan an orderly civil service system or even to avoid possible evils. City councils and state legislatures seemed to be bound to inaction in this field by forces stronger than themselves. Few if any important efforts were made by legislation to attract able men into the services, or to select only able and well qualified men, or to train men for the different places, or to standardize salaries and conditions of employment. On the contrary the spoils system was permitted to gain a foothold at an early date in local and state government, and to spread soon after into the federal departments. A party system was also suffered to grow up which made the spoils of office its chief source of strength. Positions were created at public expense to serve as rewards for party workers, and salaries were often adjusted not to the value of the public services performed but to the value of the employee's party service. The man who was not active in partisan politics, whatever his fitness for the work of public administration, was not encouraged to enter the civil service. Not until the time came when municipal and national administration had become an acknowledged scandal, and a president had been shot down by a disappointed office-seeker, did national and state authorities begin seriously to set the civil service in order. That was after a century of American self-government, just a little over forty years ago, and even in these later decades reform has had to encounter bitter opposition at every step of the way.

The Pendleton Act of 1883, the first important act for the improvement of the national civil service, had a very limited although exceedingly important objective.[2] Its main purpose was to put the merit system of selecting minor federal employees in the place of the spoils system. The act did not even have a mandatory operation. It was to extend to only those classes of employees which might be designated by the president. It did, however, attempt also to protect civil servants against political interference and assessments. In a word, the party spoils system was the enemy, and until the fight against it had been won at least in principle, little else could be attempted.

This necessity of first destroying an evil which should never have been permitted to arise has conditioned every step in civil service reform. The states and cities have had very much the same problem as

[2] 22 *Stat. at Large*, 403, 47th Cong., 2d Sess., Ch. 27, 1883. For earlier legislation, and for a discussion of the Pendleton act, see especially Fish, *The Civil Service and the Patronage.*

the federal government, and their civil service regulations have in part been copied from the federal act. As early as 1873 the New York legislature had attempted to prevent political removals from New York city's staff of employees. In 1883 it took the further step of enacting a state-wide civil service act. By 1900 there were statutes and charter provisions establishing the merit system in the cities of New York and Massachusetts, and in Philadelphia, Chicago, New Orleans, and other places.[3] Since that time the movement has spread to include a dozen states and the great majority of the large cities of the country. In fact in so far as legislation can accomplish the desired object, we may say that the merit system has been established in the more populous municipalities. The enforcement of the merit principle is, however, distinctly another matter.

A typical law or charter provision regulating the civil service in an American city covers the following matters, some of which will be discussed more fully hereafter.

1. A commission of three members is usually provided for, not more than two of whom shall belong to one political party, which commission shall appoint a salaried secretary or chief examiner and shall make rules for the government of the classified service.

2. The classified service of the city is usually defined as including all municipal officers and employees except the following: elective officers, appointive judges and members of boards, appointive heads of the principal administrative departments, the superintendent, supervisors, principals, and teachers in the schools, librarians, and certain confidential secretaries of important officers.

3. The commission is empowered to make rules for the further classification of the classified service; for holding competitive examinations for applicants for appointment; for holding non-competitive examinations in some cases and for appointing laborers without examination other than physical; for keeping an "eligible list" of those who have passed the examinations; for certifying the one, two, or three highest names to the head of the department in which a vacancy has occurred; for regulating temporary appointments, also called "provisional appointments," which may be made in some cases without examination; for controlling transfers, suspensions, and removals

[3] Article by Professor John A. Fairlie in National Municipal League, *A Municipal Program*, 1900, pp. 31–32. An optional law for Illinois cities enacted in 1895 seems to have had an important influence upon later legislation especially in the direction of expanding the functions and powers of civil service commissions.

of employees; and for checking payrolls to see that no person draws pay from the city who has not been legally appointed. To a considerable extent these rules are written directly into the law or charter, but there is usually left to the commission some power of amplifying the fundamental rules.

4. Provisions are generally inserted establishing an initial period of six months probationary appointment with the understanding that any appointee not removed within this period shall be entitled to indefinite tenure, subject only to removal for cause under the rules of the commission.

5. Generally there are provisions prohibiting partisan political activity on the part of persons in the classified service, and also prohibiting the collection of political assessments from persons in the service.

It must be evident to all that these provisions are basic, and that no civil service law could be considered complete which omitted and failed to provide an adequate substitute for any one of them. To abolish the spoils system, to insure tenure during good behavior, to separate the administration from politics, are indispensable purposes in any civil service law. Nevertheless when the problem of the municipal service is broadly considered it is evident that much more needs to be done, a fact now fully recognized in a number of large cities.

The civil service is not merely the merit system as opposed to the spoils system. Popular misuse of the term "civil service" has led to much confusion. The merit system as it has been worked out in this country is essentially only a method of getting people into civil employment and of protecting them against spoilsmen. The civil service of a city, on the other hand, includes its entire staff of civil employees and officers excepting at most only elective officers, judges, members of policy-determining boards, and perhaps a few of the highest executive officials. Substantially all municipal employees from department heads down to the humblest charwoman, laborer, or office-boy, are in, and constitute a part of, the municipal civil service. Consequently the municipal civil service problem is the entire problem of civil employment in cities. It is the personnel problem of municipal government.

If we are to get a comprehensive view of the municipal employment problem, we must find answers for at least the following questions: (1) How can men and women of the highest ability be attracted into municipal service and retained there against the offers of private industry? Obviously the municipal service cannot reach its highest

efficiency unless it is made attractive to people of more than mediocre ability. (2) What facilities are provided for training for municipal service? There are many specialties in public administration for which an ordinary general education is inadequate. (3) Assuming that an adequate number of well-trained, able persons are sufficiently attracted to municipal employment to be willing to apply for positions therein, how are the best fitted to be chosen? Upon this problem we already have considerable light, since our municipal civil service commissions have spent much time upon it. (4) How shall the service, year in and year out, be maintained at a high level of efficiency with the zeal of the workers unimpaired? What incentives can be provided? To what motives can the appeal most effectively be made? But another phase of the fourth problem is that of protecting the civil servant in his rights during his period of service, and of providing a just system for removals, and for retirement when a man can no longer serve the public well. All of these questions are but different divisions of the municipal civil service problem. They overlap on each other, and it will be hard to disentangle them.

THE CIVIL SERVICE COMMISSION

It was with the problem of selection that the civil service reformers of forty years ago began. They were confronted by a concrete situation, the gross abuses of the spoils system. They saw men selected for public employments, national, state, and local, totally without regard to their fitness to do the work. They saw public offices used as party plunder with the most callous disregard for public decency. It was with great wisdom, therefore, that they centered their attacks upon the spoils system, and demanded a better method of selection. Their solution of this problem is, in its main provisions, the one which still prevails to-day.

In the first place there was set up a civil service commission for each jurisdiction, nation, state, or municipality, which adopted the merit system. By exception in Massachusetts and New Jersey a single state commission serves both the state and city governments, while in New York and Ohio a state civil service commission exercises some supervision over the work of the local commissions. The existent municipal civil service commissions are established either by state law or by charter provision, and are thus beyond the power of the council to destroy. They consist as a rule of three members ap-

pointed either by the mayor, with or without council approval, or by the council alone, and it is commonly provided that the members shall not hold other paid municipal offices, and that not all of the members shall adhere to the same political party. Terms of office are fairly long, being usually from three to six years, with such provisions for overlapping of terms that usually only one member goes out at a time. Salaries are paid in a majority of cases, but in only a few of the larger cities is a sufficient remuneration given to the commissioners to pay for full time service. We can see from these provisions that it was intended to make the typical municipal civil service commission a continuous, impartial body composed not of ordinary office-seekers but of substantial citizens who possessed independent means of support.

In practice there have been so many failures to come up to the ideal in the constitution of civil service commissions that it would be very easy to take a profoundly gloomy view of the whole situation. The spoils politicians who still grow rank in the midst of our cities and who still succeed in getting themselves elected as mayors and aldermen have generally refused to accept the merit system in good faith. It has had to be forced upon them. "This civil service law," one of the more loquacious of them is quoted as saying, "is the biggest fraud of the age. It is the curse of the nation." [4] To prevent the law from becoming fully effective they have resorted to numerous expedients which must receive our attention. Most effective of all their devices has no doubt been that of appointing civil service commissioners who share the views of the politicians. Unfortunately the commissions have in many cases been "under political rather than under professional guidance. Individual commissioners usually have been appointed more largely on account of their political affiliations than because of their understanding of employment problems." [5] When the civil service commissioners themselves are appointed under spoils influences, the stream is poisoned at its source. Should we be surprised then that civil service commissions sometimes play the game of the political rings which dominate them? [6]

[4] Riordon, *Plunkitt of Tammany Hall*, p. 19.

[5] Governmental Research Conference of the United States and Canada, *Report of the Committee on Civil Service*, 1922, p. 23.

[6] If reports be true, the device of bi-partisanship has not especially helped matters. At least it has not produced *non*-partisanship in the sense of creating commissions opposed to party domination of the municipal service. The minority party member has usually been a politician himself who has shown little interest in fighting against the policies of the majority.

Aside from political manipulation, other factors have also worked to prevent civil service commissions from achieving the maximum of good. Because of the alternations in party control and changes in the offices of mayor and aldermen, civil service commissioners have not generally been reappointed, and many have resigned before completing their terms. Thus there have always been new and inexperienced members on the commission and it has been difficult to build up sound traditions. Furthermore very few of the commissions have adequate and assured financial resources, and it is known that many of them have been unable to employ all the examiners and clerical assistants needed to do the best work. Then, too, their powers have been inadequate in many cases. Some of these and other discouraging factors go back to a fundamental cause, namely the lack of an organized public opinion sufficiently strong to defeat or even to punish the spoils parties.

From these various causes, therefore, many grave abuses have crept into the municipal service even where the merit system of selection is supposed to be in force. We give a few examples. The charters in many cases provide that in urgent cases, where no list of eligibles who have passed competitive examinations for a certain position exists, the department head may nominate and the civil service commission may approve some person for provisional appointment for a period usually not exceeding six months and until a qualified person can be secured. Such temporary appointments are supposed to be made only in cases of great urgency, and are not supposed to be renewable. No doubt there is some justification for the existence of provisions for such temporary appointments, since the government must somehow be carried on, but what shall we say when it is reported from one large city that "in the short period of four months no less than 9,162 temporary appointments had been made," and from another that out of 2,800 classified positions outside of the police and fire services, approximately 2,100 or three-fourths of the whole number, were at one time filled by provisional employees?[7] Cases are known where men temporarily appointed in this way have in fact been kept on the payroll month after month in gross disregard of the requirements of the law.

[7] *National Municipal Review*, Vol. 5, p. 317 (1916); Cleveland Civic League, *Civic Affairs*, no. 31, May 1922, p. 3. The strange term "permanent temporaries" is sometimes used to designate those employees whose appointments are legally temporary but actually permanent.

The political domination of civil service commissions has been the cause also of other abuses. In some cities the commissioners are authorized to put into an exempt class all positions for which in their opinion suitable competitive or other examinations cannot be devised. This has made it only too easy to reward "deserving" politicians with positions which they could probably never obtain by passing examinations. When this method of evasion of the law is too obviously against the public interest the commission finds in its control of the examinations and of the grading thereof an easy means of giving the position to a favorite. In fact it is clear that the enforcement of the merit principle of selecting employees will in the long run depend in no small measure upon the characters and ideals of the commissioners appointed, and that a mayor or council interested in spoils is not knowingly going to appoint commissioners who will refuse to "play the game."

This fundamental defect in the constitution of civil service commissions has led to many reform proposals. There are those who suggest the abolition of municipal civil service commissions, and the establishment in lieu thereof of one state commission to serve all cities as well as the state. This device might succeed if the state governments were wholly free from spoils politics themselves, but this we know they are not. The state "boss" and the local "boss" either are members of the same machine, or at least have the same purposes. Others propose that the courts appoint the civil service commissioners of the city, but clearly this will tend to make the machine more than ever interested in the election of controllable judges. It is erroneous to assume that judges are entirely out of politics, and it is clearly undesirable to get them into politics deeper than they are. A third proposal is that the state civil service commission, itself chosen by competitive examination, shall choose municipal civil service commissioners for the different cities by similar examinations. A fourth suggestion is that the active head commissioner shall be chosen by examination by a special board consisting of the local superintendent of schools, a local judge, and a third person selected by the two. In this case it is proposed that there be two associate commissioners with limited powers, one to be appointed by the mayor and the other to be elected by the municipal employees. Finally there are proposals to abolish the commission entirely, and to put the control of personnel work into the hands of a single commissioner chosen by a special examining board by competitive examination, or appointed by the

city manager without examination in cities having the council-manager plan of government.[8]

These different proposals are striking evidence of the general agreement that municipal civil service commissions as now usually constituted have failed to come up to what was expected of them. They are also indicative of the difficulty that cities are going to have in finding a method of appointing commissioners which will really be free from political considerations. The spoilsman is still the root of all evil in the municipal civil service.

PROBLEMS OF EXAMINATION AND RECRUITING

The work of civil service commissions in cities still centers largely in the problem of recruiting, that is, of selecting employees to enter the service. Even when uncomplicated by the spoils system this problem is difficult and full of technicalities. Nevertheless the more progressive and non-political commissions have made considerable headway already in the solution of the many points that arise. It is not our purpose to traverse all the by-ways of this subject, but merely to show some of its main boundaries.

It is clear that the municipal service calls for many kinds of human talents, both native and acquired. Furthermore there must be different methods of selection used in connection with each distinct group of workers. At the top there is a small professional-managerial group, consisting of the men who head the departments and the more important bureaus. They need in most cases not only a high degree of professional training, but also experience, administrative capacity, tact, and some ability to meet the public. Just below them are a number of positions calling for professional training in various branches of medicine and engineering, in law, public accounting, education, and library work. The various grades of school teachers and librarians are generally considered to stand in a class by themselves from the point of view of recruiting. Among the specialized vocational groups are bookkeepers, stenographers, and clerks. Policemen and firemen also

[8] The single commissioner proposal was made by a committee of the National Municipal League. See *National Municipal Review*, Vol. 12, pp. 462–472 (1923). The *Report of the Committee on Civil Service* of the Governmental Research Conference, 1922, pp. 58–68, proposes the selection by test of a single commissioner and the appointment of two associate commissioners with limited powers as described in the text. The National Civil Service Reform League in its drafts of civil service laws for cities and for states proposes that the state commission select the local commissioners by competitive test.

call for special methods of selection. Then there are the numerous skilled trades (plumbers, electricians, carpenters, plasterers, bricklayers, stationary engineers, printers, and others), the semi-skilled trades, and ordinary manual labor. In cities which have municipal ownership of street railways or of gas and electric light works, still other vocations must be taken into account.

Many citizens have come to believe that the examinations set by civil service commissions for applicants for municipal positions are grotesquely inadequate for the purpose. The source of this idea is in large part the fertile brain of the spoils politician who has done everything in his power to discredit the merit system. He has diligently spread the word that the applicant must "answer a list of questions about Egyptian mummies and how many years it will take for a bird to wear out a mass of iron as big as the earth by steppin' on it once in a century."[9] Now, it is perfectly true that in the beginning of civil service reform there were no ideal examinations ready at hand to test the fitness of candidates for all the various employments in the city's administration. At the outset, no doubt, due to lack of time and experience and study, civil service commissions probably relied overmuch on written informational tests, and it is doubtless also true that those commissions which take least interest in the technique of examinations still use types of questions and tests which would admit of considerable improvement. But when we look at the entire progress of the past forty years, and particularly at the work of the most able civil service commissions, there is ground for the assertion that methods of examination and selection have been almost revolutionized. It is only necessary for all commissions to do what a few, here and there, are already doing to have selections of employees made with high intelligence. There is still need for research and for the interchange of ideas and experiences among the commissions, but from the point of view of examination technique there is every reason to be hopeful about the work the commissions are doing.

All American civil service laws put great stress upon open competition in examinations. The purpose in having competition is to give every citizen an equal opportunity with every other to enter civil service, and to give the entire public the benefit of the services of the best fitted persons who apply. The procedure is simple and well known. When one or more vacancies exist or are anticipated in any branch of the service, the interested department sends a notice to the

[9] Riordon, *Plunkitt of Tammany Hall*, p. 25.

civil service commission. If there are no eligibles upon the register, the commission must provide for holding an examination; otherwise it simply certifies to the department the names of the one, two, or more leading eligibles. Before holding the examination the commission prints public notices, describing the vacant position or positions and stating the time and the place of the examination together with other information of interest to applicants. There may be certain preliminary requirements, such as proof of citizenship and of local residence, presentation of credentials, and the passage of a physical examination. The latter would be very important for the fire and police services, and might constitute a part of the examination proper. At the time set the applicants assemble in the place provided and there, under the supervision of examiners employed by the civil service commission, they take an examination which has presumably been kept secret up to that time. The papers are then read and graded by persons who are employed for the purpose, and who are presumed not to know anything about the applicants. Finally the results are recorded along with other information about the applicants, and the total rating of each is calculated and set down.

While there is great diversity in practice, in general the written examination is designed primarily to test actual knowledge of the work to be done, and only secondarily to test general intelligence. In some places, however, a separate psychological test of intelligence is coming to be considered highly important. Of course, any written test always tells the examiner something about the ability of the applicant to write clearly, to spell, and to use good English. For determining all of these matters the questions need to be very carefully drafted in advance. The technique of giving and grading examinations is a very difficult one to master, and one which can be worked out only in the light of modern knowledge of psychology.

For some positions the written examination is still the most important of all, and it is almost everywhere relied on in part as a test of the applicant's ability. For other employments, however, the commissions have gone far beyond a reliance upon written tests. Performance tests, for example, can be and are being given for many different employments, such as stenography, bookkeeping, and the trades. For higher posts a thesis, or the working out of some plan or problem connected with the work of the department concerned, may be used as an added test. Finally there may come, for those who have passed the written test and who are in other respects qualified candidates, an

oral examination before a group of examiners for the purpose of testing readiness, speech, tact, personality, and a number of other points which cannot be brought out in other ways.[10]

When all of the various tests applied to a particular position have been gone through, the next problem for the commission and its examiners is that of grading the achievement of each examinee in each test and of calculating his total achievement in all factors of the examination according to some preëstablished scale. These factors may be put down as follows, although in many cases only a few of these would be taken into account while in others more of them might be considered:

General education—determined by credentials, school certificates, etc.

Special training—determined in like manner.

Experience—determined by credentials, letters, etc.

Information as to duties—determined by written, oral, and practical examinations.

Practical ability—determined by performance test, thesis, etc.

Abstract intelligence.

Personality, tact, judgment—determined by oral examination and in other ways.

It will be noted that nothing is said in this list as to local residence and physical fitness. The reason for this is that usually one is not admitted to the examination until he has satisfied these requirements. The local residence requirement, which is not wholly unreasonable for many minor employments, has proved a serious stumbling block in cases where it is applied to higher positions. A city needs the very widest range of choice in selecting its superintendent of schools, health officer, or engineer.[11] Physical condition is, of course, an im-

[10] See Procter, *Principles of Public Personnel Administration*, Ch. VI, and an article by C. L. King in the *National Municipal Review*, Vol. 3, pp. 304–315 (1914).

[11] The local residence requirement goes back in part to a provincial suspicion of strangers; is based in part upon the *octroi* principle of keeping all money and business in the home city; is related to the central idea in the spoils system, namely that public employments are rewards for past service rather than opportunities for future service of the public; and is in part more justifiable on the ground that local residents can be better known and that they have a continuing stake in the community and will, therefore, be more interested in their work. Many cities have abolished the requirement of local residence for appointment to high positions, yet it is surprising to find how tenaciously many cities cling to it in spite of the cogent arguments against it.

portant factor, especially where the city guarantees a pension to each employee. Other points to which attention is paid are standing in the community, police records, use of liquors, and so on.

It needs, perhaps, to be emphasized that the commission which does its work carefully, and which has adequate means, analyzes the requirements of each type of position to be filled, and establishes for it a different group of factors and to some extent a different examination or test for each factor. Thus for a common clerical position the commission might set up education and training, experience, knowledge of duties, abstract intelligence, arithmetic, penmanship, English composition, and spelling, as the important points or factors to be determined. Some of these, and certain others, would appear in the examination for policemen, and at the same time the arithmetic requirement, for example, might be entirely different for the two positions.

Whatever the group of factors agreed upon for a particular position, the commission will determine upon the weight to be given to each in such a manner as to make the total perfect score come to 100 or to 10. One factor might be 20, another 15, and so on. When all applicants have been graded upon the same basis they are put in the order of their total standing, and those who have come up to or have gone above the minimum of 80 or 70 or some other figure agreed upon as a passing mark have their names inscribed in order upon an "eligible list" for the particular type of position to be filled. It is from this register that appointments must be made as long as there are any eligibles. As a general rule names do not stand upon the register for more than one or two years after being put there. It is desirable, for various reasons, to have fresh lists made from time to time.

When an actual vacancy occurs in a position for which there are eligible applicants upon the register, it is the duty of the civil service commission to certify to the head of the department concerned the names of the one, two, or three highest in the list. Usually the department head may take any one of the three highest, and this practice is defended upon the ground that it enables the head to select men with whom he can work harmoniously, or who have special qualifications which he thinks desirable. It is argued that, since the persons appointed will in any case have passed the examinations, the public interests will be amply protected and there will be very little opportunity for the giving of political rewards. That the right to make such a selection from among the high eligibles is not a mere semblance is evidenced by the experience reported some years ago from the city of

Philadelphia. There, over a period of six months, when the commission had to certify to the department head the four highest eligibles, only 26 per cent of those appointed stood No. 1 in the list, 24 per cent stood No. 2, 22 per cent stood No. 3, and 27 per cent stood No. 4.[12] Because of the possibility that politicians may be rewarded in this way, while the best qualified persons may be passed over, there is some tendency among civil service reformers to-day to insist that only the highest eligible be certified for each vacancy that occurs. In Chicago this is the rule, while in Philadelphia the number certified has been reduced from four to two.

When an appointment has been made from the eligible list, it is generally for a probationary period of six months or less. During this period the appointee is on trial, and if he proves to be unsatisfactory the department head may notify him that he will not be retained beyond the probationary months. As a matter of fact it has been found that the right to give such notice has not been used as frequently as might have been expected.[13] Department heads do not want a constantly changing staff of workers, they are always somewhat uncertain whether the eligible list contains the names of any persons better qualified than those previously certified, and consequently they tend to use the power of dismissing probationers only in extreme cases of unfitness. Once the probationary period has been passed, the appointment automatically becomes one for an indefinite tenure, subject to all the protections against arbitrary removal which the particular civil service law affords.

We have now spoken of the ordinary methods of selecting employees by competitive examination. Obviously these methods are not adapted to all the employments in the city's service. Unskilled laborers, for example, are generally selected without any examination other than a physical one. The latter is important not only for getting the work done, but also to protect the city's pension funds. Laborers who can prove citizenship and local residence, and who successfully pass the physical examination, are usually listed and appointed in the order of their applications.

At the other extreme from the problem of the unskilled labor group is that of selecting persons for high managerial or executive positions, such as department or bureau headships. American cities have tried almost every conceivable method of solving this problem,

[12] *National Municipal Review*, Vol. 3, p. 314 (1914).
[13] *Ibid.*, Vol. 12, p. 450 (1923).

yet it cannot be said that there is as yet any one prevalent method. We have tried popular election, election by the council, appointment by the mayor with or without council approval, appointment by the city manager, appointment by boards, appointment by examination under the merit system, appointment by the mayor with the approval of a state civil service commission (Boston), and several combinations and variations of these methods. If experience were all we needed to reach sound conclusions upon this point, surely we have had it in ample measure. Unfortunately, however, a complete record of our experience in this particular has never been made or properly interpreted by trained observers.

One thing which has sadly confused our thinking about the problem is the prevalent view that department heads are and should be political officers. English and German cities find it wise to select their department heads and bureau heads, too, from certain professions without regard to local residence, and with only slight consideration of political affiliations. Americans, on the other hand, insist generally that department heads should be local residents who know the people and who can give them what they want. The stress here is not upon training and expertness, but upon politics, personality, and local availability. That is why so many American cities have not trained, permanent department heads, but a veritable procession of temporarily popular novices. Until there can be general agreement upon what is needed, there cannot be a nationwide settlement of this question upon correct principles.

Those who have given close and unbiased attention to the problem are swinging generally to the conclusion that department and bureau headships should be filled in practically all cases by permanent officials with definite training for the work in hand. Their ability in administration, according to this view, is not helped but hindered by their local political availability. Their obligations to a local political machine, if they have any, prevent them from pursuing with singleness of purpose the best interests of the departments which they head. Consequently there is a tendency among many students and reformers to insist that department heads should be selected upon the basis of administrative and professional merits alone, without regard to local residence or politics, and that the method of selection should be one which is designed to stress the qualities desired. This would rule out of consideration every method of selection in any way colored by politics or the local spoils system.

The first requisite would seem to be to lay down in the charter certain fairly high professional qualifications for applicants for some of the department headships and other high positions, as for example a degree in civil engineering from an approved university for the head of the engineering department. Beyond this it is a bit difficult to lay down any principles. Those who have the most faith in the city-manager plan of government seem to believe that a city manager can be trusted to make his appointments without aid or interference. In many cases, no doubt, this confidence has not been misplaced, yet there must be many other cases where the manager himself has only a limited knowledge of men in the various fields and could be much assisted by the work of some impartial body in gathering information about them and in making a proper selection.

Civil service reformers generally propose noncompetitive, or better still nonassembled examinations for the purpose of filling the higher positions. A noncompetitive examination is one given to a candidate nominated by the appointing officer for the purpose of determining his fitness. Since there need be no publicity in a case of this kind, and there is only one examinee, some men of high professional standing who would not submit themselves to public competition might be willing to take the examination. A nonassembled examination is one which is truly competitive, being taken by various men at the same time, but differs from the ordinary competitive examination in that the competitors need not all come together in one place, and there can be secrecy as to the identity of the competitors. Under proper supervision a man might take the examination in his own home or office. In theory if there were sufficient coöperation among municipal civil service commissions in conducting and supervising examinations, and there were no local residence requirements, an engineer in Milwaukee, another in Boston, and others throughout the country might be taking at one time an examination for an engineering post in San Francisco. Indeed, something of this sort has actually been done in a few cases.

The point seems well taken, however, that for administrative posts of high rank, much weight should be given to personality, tact, judgment, and other somewhat intangible factors almost impossible to measure. An engineer at the head of a city department needs to be something more than what has been too facetiously called "an animated slide-rule." Probably the best test of the personal qualities needed by a city engineer is the test of his success in practical work.

Hence great stress should be placed upon his experience and his professional reputation. The national professional societies could undoubtedly do much for the placement of good men in municipal positions by establishing clearing houses of information about members. In many cases, however, a personal conference with the candidate by the head of the city administration or some representatives of the local civil service commission will be indispensable for a final determination of his fitness. Provision should be made, therefore, to have the one, two, or three who passed the nonassembled examination with the highest grades, and who are otherwise well qualified, come to the city for an interview or for an oral examination. This can also be done without undue publicity.

Almost everywhere city school teachers are selected without regard to the local laws applicable to other municipal employees,[14] and librarians, too, are in many places exempt from the usual merit system laws. This is due in part to the fact that these departments are generally under separate boards or corporations, in part to the fact that other methods of selecting teachers and librarians were developing at the time when the civil service reform movement first began seriously to affect city government. School teachers are commonly selected by the local superintendent, with the aid of supervisors and principals, upon the basis of their having taken an adequate amount of training work in approved normal schools, colleges, or universities, and having received state or municipal certificates valid in the particular locality. Due weight is also given to credentials and experience. It is hard to escape the conclusion, however, that religion, nationality, and political considerations are frequently influential with the appointing authorities. The general feeling among school administrators that teachers can not be selected as well by the methods used by civil service commissions is probably open to much criticism, yet until the civil service commissions have gone much farther toward solving their own problems, there is nothing to be gained by putting upon them the added work of selecting the teaching staff.[15]

We have now given what space we can afford to the problems of re-

[14] On the selection of teachers see generally Frank W. Ballou, *The Appointment of Teachers in Cities*, Cambridge, Harvard University Press, 1915.

[15] But in the city of New York methods similar to those of civil service commissions are already used for the selection of teachers. See "The Work of the Board of Examiners of the New York City Board of Education," by Fred Telford, in *Public Personnel Studies*, vol. II, pp. 268–287, December, 1924.

cruiting for the municipal service. The conclusion would seem to be that while much progress has been made toward working out more satisfactory examination methods than once were used, that further progress along these and related lines must depend upon the improvement of the civil service commissions themselves. Until they can be more completely freed from domination by local party leaders and spoils ideals, we must not expect to see rapid progress toward perfection in selection methods.

It may be suggested, however, that the evils of political domination may be reduced if, by law or public opinion or both, the commissioners, who are usually amateurs in this work, could be induced or compelled to give more authority into the hands of the permanent expert examiners to set and conduct the examinations. If this could be done, the research and publicity work of such agencies as the Bureau of Public Personnel Administration would produce a greater harvest, for in that case less of the seed they sow would fall upon stony ground.

REFERENCES

(See end of chapter XIX).

CHAPTER XIX

THE MUNICIPAL CIVIL SERVICE

II. Planning for Increased Efficiency

MAKING MUNICIPAL SERVICE ATTRACTIVE

In spite of all that has been done in forty years of reform effort, neither the federal nor the municipal civil service has yet become highly attractive to the ablest and best trained graduates of our high schools, technical schools, colleges, and universities. It has become traditional for ambitious young men and women to look to private business and the private professions, perhaps even to politics, as roads to success in life, but very few think of the civil service as such as a worthy field in which to cast their lot. While many able people drift into it, relatively few directly prepare for it. These strictures do not apply, of course, to a number of specialties such as public health work, city planning, and teaching. We think we see the tide beginning to turn in recent years, but the common aversion to civil employment among educated people will be a long time passing away. Furthermore, municipal service is to most persons rather less inviting than state or federal. The reasons for this attitude are not hard to find.

1. **The problem of compensation.** We have in this country no considerable class of men and women with private fortunes who are willing to serve the public for little or no pay. Most men need to earn a part or all of their living expenses, and relatively few are able to resist offers of higher salaries when made. Income is with us a common measure of success. Consequently a city which expects to meet private competition in the ability market must either pay as well, or must offer other and compensating inducements. This will be especially true of the small number of managerial and professional positions near the peak of the civil service pyramid.

As a matter of fact, however, the wage and salary curve of the average city presents generally an interesting contrast to the corresponding curve of a typical large and progressive private corporation. For the

services of the ablest lawyers, physicians, engineers, and managers the sixty-eight cities of over 100,000 population are not in a strong position to bid against the hundreds of large corporations or against the allurements of successful private practice. While precise figures cannot be given, we know that the salaries paid such men by cities are small when compared with the earnings possible outside of municipal service.

On the other hand, as we run the eye down along the scale of ability and training we soon reach a point where, on the average, the city seems to be paying about as much as the private corporation or as much perhaps as the persons concerned could make for themselves as independent entrepreneurs; and still farther down the scale we find semi-skilled mechanics and laborers receiving from the city ordinarily more wages than they would probably receive from a private employer.[1] It will perhaps tend to clarity to observe the figure given herewith which roughly portrays this interesting contrast.[2] The public compensation curve tends to start higher at the left but not to go so high at the right as the private curve. The municipal curve is flat or "democratic" as compared with the private curve which is steep, *i. e.*, shows the greatest spread between the lowest wages and the highest salaries paid.

Now it is precisely at the top where the city needs to put most emphasis. There is not likely to be much difficulty in the city's getting all the laborers, skilled mechanics, clerks and stenographers it needs, and of as good quality as those who go into private business. But will it get really able physicians for its hospitals, engineers for its public works, lawyers, and executives? And if it does not get the best ability for its highest positions, how can it expect to obtain the best services from those farther down in the departments?

It is not hard to find plausible reasons why municipal policy in the matter of compensation should differ from that of the private corporation. Most of our cities have but recently grown to large size, and many are still operating under charter provisions and laws designed for smaller places, or at least they are still dominated by small town

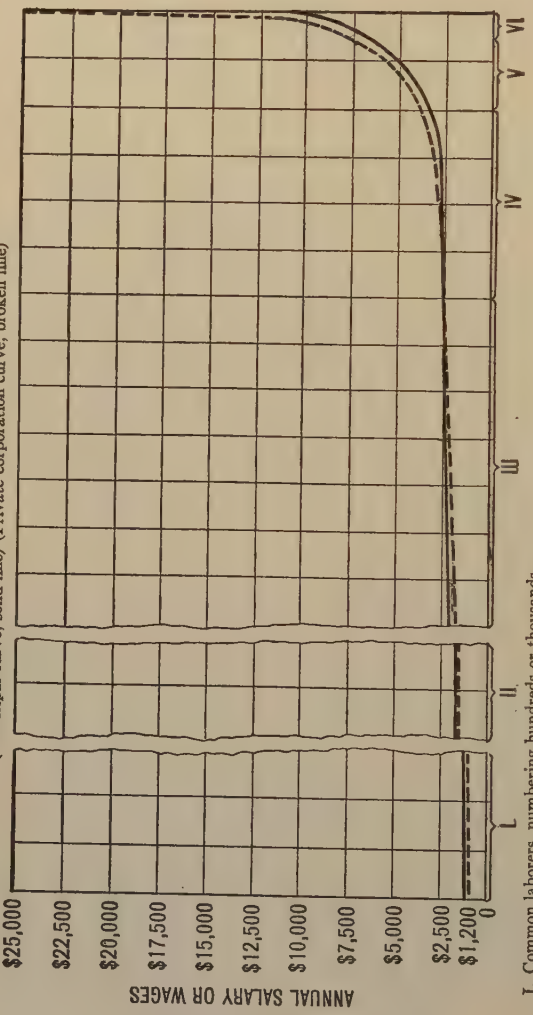
[1] This statement applies primarily to large cities, since small places as a rule pay low wages as well as small salaries. Furthermore the statement is true of large cities only in the long run. In the period of rapid wage increases from 1917 to 1920 cities generally fell behind many private employers in the rates of wages paid, and consequently lost many workmen.

[2] See the diagram p. 474.

traditions. In addition to this, very few cities have felt able fully to adjust salary scales to the great rise in prices which came during and after the war. These factors are not of such enduring importance,

SALARY AND WAGE CURVES OF AN HYPOTHETICAL "AVERAGE" CITY OF 500,000 POPULATION AND AN HYPOTHETICAL "AVERAGE" LARGE PRIVATE CORPORATION

(Municipal curve, solid line) (Private corporation curve, broken line)



I. Common laborers, numbering hundreds or thousands.
II. Semiskilled and skilled laborers, numbering hundreds.
III. Positions requiring general capacity, but not highest professional training: Inspectors, policemen, firemen, clerks, stenographers, etc., numbering many hundreds.
IV. Technical, teaching, accounting, and other positions requiring professional education, numbering hundreds.
V. Positions calling for advanced scientific, legal, medical, and engineering training and high ability,—a small number of places.
VI. Highest executive and professional positions,—fewest in number.

NOTE: This chart is based more upon common observation than upon exhaustive inductive research. Obviously there is no such thing as an "average" city or an "average" corporation.

however, as one or two others. Many cities, perhaps the majority of them, still select their important department heads from the local populace and on the basis of their political affiliations and service rather than because of outstanding ability or training. The citizens

generally realize this fact and feel that such men are not really worth much more than they are being paid. In this belief they are doubtless right in many cases. Larger salaries should not be paid unless abler servants can be secured.

Furthermore there is a prevailing sentiment in every democratic people, particularly noticeable in the United States, against the payment of high salaries to public officers. The people are opposed to raising a few high above the general level. Whoever looks over the lists of salaries paid to governors, judges, and mayors, must be especially struck by this fact. The demand for equality among men has the effect, in this field, of keeping low the salaries of the higher officials. Many persons think that the honor of serving the public should more than make up for the smallness of the salaries paid. On the other hand the demand for the recognition of the dignity of labor, and modern insistence that the government, at least, shall pay a living wage, has resulted in forcing the large municipalities generally to pay better wages for labor than are usually paid by private employers in the community. Many people entertain a vague hope that if the public pays labor well, private corporations will follow suit.

Finally there is the matter of votes. The laborers, the mechanics, the policemen and the firemen, are numerous, and the aldermen cannot afford to antagonize this large group of voters and the voters whom they influence. Just as long as the public is tolerant of high wages for public labor, then, it is not likely that the councilmen will strenuously resist the pressure for wage increases. Indeed, where the aldermen themselves are exponents of the spoils system and hold no high ideals of the positions which they occupy, they are probably not above calculating upon increased political support from those employees whose pay they have succeeded in raising. To increase the city attorney's salary from five to ten thousand dollars a year would not gain but lose them votes; but to raise the wages of several thousands of laborers from $4.50 to $5.00 per day will have the effect of influencing many voters favorably.

This situation arises, of course, from the fact that the laborers and other workers on the city's payroll are also voters of the city. They are both servants and, to some extent, masters of the city council at the same time. Because of this often vicious circle of relationships between the city workers and the council, many persons have come to assume a pessimistic attitude toward the whole civil service problem. To the writer this position does not seem to be wholly justified. While

there may be some ground for the complaint that the rates of wages paid in the municipal service are too high, it is probably a far more serious matter that the salaries paid to high and responsible officers are too low to attract the most able men. The character and the service-product of the entire civil service is determined far more than we generally realize by the qualifications of the men at the top.

In competing with private industry for servants of ability, cities suffer also to some extent because of the relative rigidity of their wage and salary scales. During and just after the Great War the cost of living went up rapidly. While business was good and prices were on the up-grade, private companies were able to raise the pay of their employees quickly, as the need arose, and to provide bonuses as well. As a general rule, however, cities must set their salary and wage rates for a year at a time when passing the annual budget, and even the budget should be and is usually passed several months before it goes into effect. Furthermore cities are in many cases forbidden to pay their officers anything over and above the fixed salary rate.[3] Not only is this the case, but it is hard to raise added funds from year to year without largely increasing the tax rates, a move which is always opposed; and when living costs are going up, social justice seems to require that whatever added sums are raised should go into increased pay for laborers and other minor employees instead of going to advance the higher salaries. At such times, therefore, the loss of especially valuable employees is greater than usual. The lure of higher pay in private business draws them away.

When the tide turns, however, when prices begin to fall again and private business men commence to suffer serious reverses, it is too late to get official salaries materially increased. "This is no time to increase public expenses," write the pundits in editorial offices. Then it is that the able and ambitious official who has served through lean years in the hope of future recognition begins truly to doubt the gratitude of municipal republics, and as soon as possible to seek in other fields his just reward.

Much of the difficulty with municipal compensation of officials and employees goes back to the spoils system and the almost complete lack of standardized compensation policies. When offices have been created it has often been with a view to finding places for individuals

[3] Dillon, *Municipal Corporations*, 5th ed., I, pp. 739–740. The rule applies, however, more to officers with fixed annual salaries than to employees. Some of the latter may be employed on the day to day or week to week basis.

selected in advance. The pay has, therefore, been determined with politics in view. The nature, the value, and the difficulty of the services to be performed have often been only secondary considerations. In almost every city it will be found, therefore, that employees and officers having similar titles and doing much the same type of work are paid at the most diverse rates. Some positions are known to be sinecures, or, in the vernacular, "plums." While there has been an honest and intelligent effort in many cities to standardize employments and titles, and to provide equal pay for equal work, the progress of such reforms has been slower than it should have been, although it appears to have been more rapid in public than in private employment.

2. **Problems of advancement and promotion.** But it is not only the initial salary upon entering the service which concerns the young man or woman looking forward to a career. He wishes to know, also, whether faithful work will surely be rewarded by advancement in salary from time to time, and ultimately by promotion to a higher post. If he has the spark of ambition in him, he does not wish to stand still, or to enter a "blind alley" employment. In this respect, too, while there has been some recent improvement in the municipal civil service, perhaps more than in private business generally, much remains still to be accomplished. Before the advent of civil service reform something had already been done to regularize salary increases and promotions in a few municipal departments, and there is no reason to doubt that merit was always given some sporadic recognition. To make the service really attractive, however, the regular reward of merit must be established as a principle and a system throughout every department. This certainly has not been done as yet. In the majority of cities the highest positions are still used as party spoils. To one who enters the service near the bottom with the aim of working up there is soon displayed the warning sign: "Thus high and no higher may you go unless you are willing to give political service." Promotion from one city to another, while not unknown, is relatively rare. The recognition denied at home cannot confidently be looked for elsewhere. Even increases in salary, the employee soon learns, go largely by favor of the political powers in the city. Such conditions can be nothing but discouraging.

3. **The problem of tenure.** Under the crude spoils system of an earlier day there was no attempt to build up a permanent, professionalized civil service. One's title to office depended upon political

services. It ended when the party was defeated and the new party came into power with its train of hangers-on, for each party had its "hewers of wood and drawers of water" who knew that they were entitled to rations. It was not uncommon to have an incoming mayor frankly state his intention to get rid of all his opponents and to fill the offices with his partisans. Tenure could be ended at any time for political or other reasons. Fortunately the adoption of the merit system has resulted in many cities in preventing the grosser forms of political removal. Tenure of office has become relatively secure. In this respect we can already point to a considerable improvement in the municipal service. It is possible, however, that tenure may become too secure, that it will be made difficult to remove men from the service even for good cause. This possibility we discuss hereafter.

4. **Other conditions of service.** There are, finally, a number of miscellaneous but important conditions which go to make the service more or less attractive. In the matters of hours, holidays, sick leave, medical aid, vacation allowances, and pensions, the large cities are to-day probably more liberal with their help than are most private employers. The eight hour day is fairly common, with Saturday afternoons off, and with an annual two-weeks vacation on pay. Cities provide, also, fairly clean and attractive working quarters, and adequate equipment. Moreover the city is not a "driving" employer, but more inclined to laxity in discipline. These are factors of greater interest to the inferior than to the higher employees, however. They appeal to the man who wants "a good steady job" rather than to one who seeks a field for strenuous and distinguished public service. The latter wants freedom from political interference, a wide scope for his personal initiative. In the end, no doubt, he, with all his fellow employees high and low, desires also some honor and public esteem.

In these latter respects municipal service still leaves much to be desired. The ever-changing political authorities of cities must always be learning anew the value of trained service and the need of placing reliance upon it. The political heads in the mayor's office, in the council chamber, and in the departments, are inclined to interfere too much with the work of the expert. While he no longer has to pay political assessments to the extent that he once did, the trained officer or employee must still render some political services and must also submit his plans and the finished product of his work to the criticism of local leaders who probably know much less about them than he does. This is very irksome to many employees, and it is especially trying

when the politicians, for political reasons, set aside the judgment of the expert. Even when this does not occur the latter usually finds that there are provisions in the charter or in the laws which hamper the working-out of his plans. Instead of freedom he finds checks of many kinds upon his action. It takes a man of much patience and specialized talents to find his way through and around the numerous political and legal restrictions to a place where he can achieve the results for which he has hoped.

When he does succeed there is not wanting a meed of public gratitude and honor for his works. In the average large American city the citizen could probably tell upon the fingers of one hand the number of permanent local administrative officers who have lived to receive full recognition for their services, but the smallness of the number is due more to the spoils system which has prevented our having many distinguished administrators to honor than to a want of public appreciation of good work. City-dwellers are inclined, perhaps too commonly, to characterize the higher municipal employees as "politicians," using the term in a derogatory sense. When the time comes, if ever, that we have many able and trained municipal employees, high and low, on permanent tenure, who are making municipal administration their life work, it is not to be doubted that the public will have evolved some system of honoring and rewarding those who have most faithfully served.

If our canvass of the entire situation is substantially correct, it would seem that municipal service is relatively more attractive in the lower than in the higher levels of employment. It is unquestionably an excellent thing for the service and for the workers that large cities generally do so well by the majority of their employees, but certainly there is room for great improvement in the conditions at the top. The first result of the present situation is undoubtedly to deter many persons of character, training, and ability from even thinking seriously of entering municipal work. On the other hand many individuals who have not fully studied the situation in advance may enter the service, remain in it long enough to get valuable experience and to attract some public attention, and then, just as they are becoming highly useful civil servants, leave it for some more attractive employment in private business. The consequence is an undesirably rapid "turn-over" in municipal employment, and the loss of some of the most valuable employees. Those who remain are not in all cases the least efficient, but it is likely that the average of their abilities is less

than that of those who voluntarily withdraw. In any case the morale of the service is detrimentally affected by the loss of many able employees and by the conditions which cause this loss. What is lost by the failure to attract into the service still more persons of ability is, of course, something which we cannot calculate. At best an unattractive service is likely to be an inefficient one.

TRAINING FOR MUNICIPAL SERVICE

After reading a description of the American municipal civil service as unencouraging as that which has gone before, the reader might well inquire why any one should care to train for that service at all. The point is well taken without a doubt. If a man of education and ability looks only to his own immediate advantage he will generally shun municipal employment. But there are those forward-looking spirits who are not content to let matters rest where they are. They realize that trained men are absolutely essential to effect the improvements so much desired in municipal government, and that it is futile to urge councils and mayors to appoint men of training unless there are some such available. The demand cannot all be created until at least a partial supply exists. At least there must be samples to show. Thus it is that training for municipal service has begun in various lines long before the cities generally have come to demand trained servants.

If we take a long and broad view of this problem of training we shall probably be unable to say when training for the municipal service first began in this country. After all, the city as an employer uses men of numerous long-established professions and vocations. Thus the city government needs lawyers, physicians, accountants, chemists, and civil engineers. A man with a good general law training is perhaps well qualified for a position on the staff of the city attorney or corporation counsel. A well trained physician will serve the purpose in a number of positions in the city hospital or in the health service. While such men would undoubtedly be better prepared if they were to take some additional specialized courses looking toward the particular work they expect to do, it is the broad general training in law or in medicine which is most important of all. Let a man first make of himself an able lawyer, physician, engineer, or accountant. Then he will be well fitted for his particular line of work in either a public or a private position, and if he fails to find employment with any city he may still use his acquired talents in private practice.

There are certain specialties, however, which fall peculiarly within the range of municipal administration, that is to say, fields of work in which the trained person practically must look forward to municipal or other public employment. We mention first of all school superintendents, supervisors, and teachers, librarians, and public health officers. Academic training for these specialized lines of work began in various places as independent movements not many years ago. Indeed the reader would be surprised to learn how little definite training for even these professions was offered before 1900. To-day a number of institutions offer courses of training for school superintendents and teachers, and there is already an adequate number of others of good standing which offer training for librarians and health officers.

In 1906 was established the New York Bureau of Municipal Research, which soon became an important school for training public administrators.[4] It put stress upon financial problems, budget making, accounting, administrative organization, and personnel work. Its own teachers were in large part men broadly trained in political science, but it put its emphasis upon concrete and practical problems. From this institution and others which grew out of it soon began to come a small stream of men, of whom many found places in public administrative work, while others went into research bureaus, city club and chamber of commerce work, and private business. The municipal demand was as yet inadequate to take up the entire supply. Nevertheless the training work goes on and has spread to other places.

A bit later several leading universities began to display an interest in city-planning work, with the result that courses were soon established for training men in this field. Then came the city-manager movement, and again several universities as well as other institutions thought the new work important enough to warrant the introduction of new courses. Both in city-planning and in city managership a man needs maturity and experience as well as technical training, notwithstanding which it has been possible to place a number of graduates in positions immediately upon graduation.

In these scattered and tentative beginnings we have, no doubt, the

[4] The present name of this institution is *National Institute for Public Administration*. Any student interested in the public service as a career should procure its announcements. Syracuse University, Syracuse, New York, has recently established courses of training for public administration, and so, in a different way, has the Robert Brookings Graduate School of Washington, D. C. Other universities are also either doing or planning work of this nature.

promise of something very important in American municipal development. Within a single generation training for the public service has been placed upon a broad foundation. The next step must be to create more public demand for trained service. Municipal civil service commissions already do something to encourage regular training by giving some recognition to the degrees and certificates of well established training schools.

Up to this point we have spoken of training for high professional positions. The training of men and women for the numerous less important posts is also worthy of notice. To a considerable extent we can apply here the principle noted above with reference to the professions of law, medicine, and engineering, namely, that specialized training in the municipal phases of the work is hardly required. There is no such specialty as municipal stenography. Common clerical and bookkeeping work are much the same when done for the city as when done for private companies. Carpenters, painters, plumbers, and electricians, do not need any additional or more specialized training to do municipal work.

There are a number of lines of work, however, which are peculiar to the local government service. The duties of the policeman, the fireman, the sanitary inspector, and the tax assessor, cannot be learned in private employment. Either the city itself must provide training for such officials in its own schools and service, or the instruction must be given by outside schools, or else the officer himself must learn his duties at public expense by getting experience in the service. Too many cities have gone on the assumption that training for such positions is not required.

In addition to the employments just mentioned, which are peculiarly municipal, there are special municipal phases or emphases in many kinds of work which cannot be understood without study. Municipal accounts, for example, are not kept exactly like those of private businesses, and there are many specialties in municipal clerical work with which the average clerk is not familiar. Some additional training in these specialties might prove to be valuable to the employee and to the public.

For the very obvious reasons that have been given, a number of the larger American cities have in recent years given definite attention to the problem of training employees as one phase of the personnel problem. Police schools and special classes or schools for firemen and for assessors are fairly common; and while it may be that none of them is

perfect, it is at least encouraging to see a beginning. In addition to these facilities there are in some cities large colleges or universities which offer evening classes in accounting and other subjects of particular value to municipal employees. One point that is coming to be recognized is that it is not enough to offer a short training course at the commencement of service. To obtain best results the work must be continued year after year. Such continued training is of particular importance to the employee who seeks promotion to higher rank. The ideal municipal employee is always going to school, and is ever willing to study the newer and more intricate phases of his work. No one needs to be reminded, of course, that many if not most municipal employees are far from attaining this ideal goal. The incentive to further training can be given, however, and it is for civil service commissions and others who are interested in the municipal personnel problem to promote further training for municipal service by every means in their power.

The city which does most to encourage the continuous training of its various groups of employees is likely to benefit in some very definite ways. Its public employees should be more alert and intelligent, more interested in their work. Each department should be better able to keep abreast of progress in its field. In their meetings for study better than in the hours of service, the employees should be able to get acquainted with each other and to build up a sound morale. As a result of what he learns about the progress of his different employees in their classes the department head should be able to place men in the work for which they are best fitted, and thus to prevent that part of the turn-over which is due to the discouragement of men who are not fitted for the work which they are asked to do. Finally the training should be valuable in preparing the abler men for promotion to higher ranks, and in giving the city a constant reserve supply of ability to be called upon in case of need.[5]

In these few pages we have tried to present concisely the problem of training for the municipal service. That there have been promising beginnings is evident, but little more can be claimed. The funda-

[5] Nothing is said in the text about the desirability of physical education and regular exercises for municipal employees, but it is obvious that the subject is important. Policemen and firemen cannot maintain efficiency without keeping in good physical trim, and there is little reason to doubt that clerks, stenographers, and other municipal employees in the more sedentary pursuits would also benefit and that their work would be better done if they, too, could be induced to keep up regular physical exercises.

mental question of whether training shall be general or special seems to have been settled in favor of the special, but how wisely settled we cannot say. The question of the recognition of diplomas or certificates, as in the educational world, as evidence of proficiency in certain lines of work, has not yet been decided, although some city charters specify that candidates for appointment to certain high administrative posts must be graduates in medicine or engineering while the commissions themselves in many cases admit to their examinations only those who have had a certain training. There are other questions such as those of organizing, supporting, and standardizing training schools, and the relationship of the civil service commissions, the state governments, and the universities to this problem which are yet in need of answers. It is probably beyond dispute that much of the success of the municipal civil service in generations to come depends upon steps being taken to provide the requisite professional and vocational training.

THE MAINTENANCE OF EFFICIENCY

The various phases of the civil service problem are so closely bound together that it is difficult to keep from trying to discuss them all at once. The problem of maintaining efficiency, for instance, is intimately related to the problems of training for the service and of making the service attractive, and just as closely connected to that of recruiting. Nevertheless the present problem is in some respects a different one. It might be possible to encourage an adequate number of well qualified persons to train for, and to seek admission to the municipal service, and even to select from many applicants the ones best qualified for service, and still we might find that in the course of time there was stagnation and inefficiency in the day to day work of the departments. Under some conditions men lose their ambitions, and permit their abilities to grow rusty for want of use. The problem is that of finding incentives which can be appealed to successfully over a long period of years, for the person who enters service in his twenties may have forty or more years to work before his retirement. What we want is to get the best services out of all employees year in and year out. The problem of how to do this is worthy of attention whether the employees have been well trained and well selected or not.

Standardization, and equality of pay. Fundamental to a proper recruiting policy and also to the promotion of efficiency in the service is the establishment of a complete and equitable standardization of

positions and titles, and of the principle of equal pay for equal work. In the typical American city down to very recent times no attempt had been made to establish uniformity either in positions, or in titles, or in pay. In different departments new positions had been created from time to time without regard to any guiding principles. Titles and salaries were attached to different positions in what seemed at a later date to be a wholly arbitrary manner. A person doing ordinary stenographic and typing work might be called a "stenographer" in one department, a "typist" in another, a "secretary" somewhere else, a "clerk" or almost anything that was even remotely descriptive of her work. The salary of one might be $900 per year, of another twice that amount, and so on. What political and personal pressures were brought to bear in order to produce such inequalities we need not here consider. The results alone concern us.

For lack of a standardized terminology and description of duties, councils and budget officials were totally at a loss when it came to comparing the expenses of different departments, and civil service commissions were unable to set proper entrance examinations. The many inequalities were not, in fact, clearly brought out until after the introduction of the budget system and the merit system of appointment. Investigations clearly proved that some employees were much overpaid when the value of their services was considered. Others were underpaid. The overpayments in one group of cases sometimes amounted to a substantial loss to the city. At the same time the city was not getting something for nothing in the case of underpaid employees. On the contrary there are very few factors which have so depressing an influence on personal initiative as the sense of being unjustly treated. Municipal payrolls are not secret documents, and it does not take long for employees working largely under the same roof and going out to lunch together to learn much about the treatment of employees in different departments. The underpaid employee is likely to be one who does not work very hard, or else he is one who quits on slight provocation, in which case the department is put to the expense of finding another and then another and another to fill the vacancy. This turn-over is often expensive for the city. A sound morale and loyalty among employees cannot be built up on patent inequalities in rewards.

To say that there should be classification of positions and equality of compensation is easy enough, and is wholly logical once the salient facts are considered. To accomplish the result is quite another

matter. There are, in the first place, some difficult technical problems. A classification of positions must obviously be based upon an exact description of the duties of each position. In a city with many thousand employees this is in itself no easy matter. Then must follow the working out of classifications upon the basis ot the descriptions obtained. Here there is room for much difference of opinion. Thereafter come the problems of grouping the various classes of positions into services,[6] with a regular hierarchy in each so as to provide for promotions by established steps from the lower to the higher positions, and finally the elaboration of a salary and wage scale which will give full justice to all positions. The latter problem raises such points as these: Shall salaries be based upon the cost of living, or upon the value of the services rendered, or upon current rates of pay in private industry? If the value of the services is taken as a basis, how can this value be computed? If the cost of living is taken as the basis, what standard of living shall be taken as normal, and what can be done to provide flexibility in salary rates when the cost of living goes up or goes down? Shall provision be made for regular salary increases from year to year, as an encouragement to continuous service, or shall increases depend entirely upon demonstrated efficiency? And above all, how can the public's desire to keep governmental expenditures at a minimum be harmonized with the public demand for good service and the employees' right to adequate compensation? These are but a few of the outstanding questions which must be faced when a city begins to put its administration in order. It is clear that they cannot be answered out of hand by the enunciation of platitudes.

Beyond the technical problems of standardization lie the political ones. With the aid of men skilled in personnel work it would be possible for any city to put down on paper a complete classification of all its administrative positions and to lay down principles as to compensation which, if not perfect, could at least be accepted by impartial students as eminently fair. But after the plan has been made comes the work of putting it into effect. At this point many standardization schemes have come to grief. Too many municipal civil servants have

[6] A "service" or "vocation" is a general field of work, subdivided into "classes" and "grades" but constituting a unit in itself. In Chicago the services are widely inclusive and consequently few in number, *i. e.*, the clerical service, the medical service, etc. In New York city and elsewhere there are more and narrower services. Promotion is within the particular service, and very rarely from one service to another. See Beyer, "Employment Standardization in the Public Service," supplement to the *National Municipal Review*, vol. 9, pp. 396–398 (1920).

their local political connections and friends. If standardization could be accomplished without either reducing a single salary, or increasing the tax rate a dollar, there might be less opposition, but unfortunately one or the other of these things must be done. Usually some salaries must be lowered, some must be raised, many titles must be modified, and other changes must be brought about which arouse the opposition of numerous employees. The council which hears their complaints is itself frequently opposed to standardization because it deprives the council of the power to fix the salary for each office and position separately. Thus it comes about that although many standardization surveys are made, and many classifications are made operative in large part, few if any are put fully into effect. Here as in other cases the pace of the reformer must be slowed down nearly to that of the vested political interests.

It is likely, however, that standardization will ultimately come in all large cities as it has already come in part in a few. When it does come, there is reason to believe that it will make the municipal service not only more attractive but also more efficient. It will provide regular means for advancement and promotion, which are still inadequate in many cities. It will give every employee to some extent the incentive to work which comes from a sense of being fairly treated. It will enable civil service commissions more closely to observe the results of administration, and to adapt their rules and examinations more intelligently to the problem in hand. It will enable city councils and high officials to resist more easily the demands of politicians for special favors to this and that employee, and to exercise a more stringent and intelligent control over expenditures for personal services. In fact it is difficult to see how any general improvement of the municipal service can take place without some progress toward standardization.

Advancement, promotion, and rewards of merit. We have already spoken briefly of advancement and promotion in the municipal service as it exists to-day. It is only in recent years that cities have made definite and regular provisions for these matters, but in so doing they have given belated recognition to the importance of these matters in administration. By "advancement" the students of the civil service are coming to mean an increase of salary without change from a lower to a higher grade or class, or in other words a salary adjustment. A "promotion," although it involves usually an advancement in salary, usually means a step upward from one class or grade of position to

another. Unless regular rules are adopted to cover both of these points, either or both are likely to depend upon seniority or upon political preferment. In either case the efficiency of the service is likely to be impaired.

In addition to advancement and promotion it is possible to think of a number of other rewards for special merit or proficiency which may serve as incentives. In private industry and in military and naval service there is some resort to honors, medals, bonuses, and other devices for encouraging men to do their best. While it is true, as we have said, that the courts have in some cases held that a city may not pay an officer more than his prescribed salary for services rendered in any particular year, there seems to be no reason why regular provision could not be made for honors and medals at least. Indeed, some city departments such as the police departments in New York and other cities already do something in this direction. Of course, all of these things—promotions, advancements, and rewards of other types—imply that the city keeps records of the work of each individual employee. Without such records very little could be done that would not appear like mere favoritism. Unfortunately the keeping of such data on an extensive scale in an impartial and worthwhile manner is itself a very large undertaking, and one which very few cities have been able to accomplish to date.

Other aids to efficiency. The proficiency of municipal servants can be advanced in many ways. We may list here some important suggestions, a few of which we shall need to discuss.

1. The constant re-education of employees by means of classes in special subjects conducted at local colleges and evening schools and within the service itself. This point has already been dwelt upon.

2. Provision for the easy transfer of employees from one employment to another according to their aptitudes and their ability to pass prescribed tests. In municipal as in private employment there are probably many misfits.

3. Arrangements whereby groups of employees may be shifted from one department to another to assist in handling the peak-load of work at particular seasons. Fortunately the heaviest burden of work comes in different departments at different times of the year.

4. The careful selection of bureau heads and head workers of all kinds for their ability as administrators.

5. The carrying on by the city of welfare work among employees,

and care for them in periods of disability. Some private corporations appear to be ahead of most cities in work of this kind.

6. The promotion to as great an extent as possible of self-government and a high professional spirit among employees, in order to develop the sense of responsibility for the work to be done.

7. The clear formulation and the impartial enforcement of rules for the removal, suspension, and discipline of employees, with adequate opportunity given them to answer all charges against them.

8. Just provision for the retirement of aged and incapacitated employees on pensions.

We need to give some further attention to the last three points.

Organizations of municipal employees for self-help and self-government. It is a marked characteristic of modern society that different groups of men become specialized for different functions and activities. There are farmers, railroad workers, school teachers, doctors, and many other classes. It is also characteristic that with modern means of education and communication the workers in each group draw closer and closer together for the development and protection of their particular vocation or profession. These organizations have different forms and diverse purposes. Physicians have national and international organizations for the advancement of medical knowledge and for the promotion of the dignity and the standing of the profession. They have also their local city or county units. Manual workers are sometimes organized within and for a particular plant, but are more commonly united in crafts, as in the cases of carpenters, printing pressmen, and machinists. These craft unions have their "locals" and also their national and international organizations or federations. Binding together the various crafts there are various local federations, called trades and labor assemblies or councils, and such national aggregations as the American Federation of Labor.

We have tried to make it clear in earlier pages that city, state, and national governments in modern times are also building up their specialized groups of workers. In the national service the postal workers are probably the best example. In the cities there are the policemen, firemen, teachers, and other groups. Now, as the civil service under the merit system becomes more and more the chosen life work of many people, and as the requirements for admission to the service become more stringent and call for more training, public employees will naturally have more pride in their work and will also acquire something in the nature of a vested interest in their several

chosen vocations. The postal worker and the teacher and the policeman will feel the same need as the locomotive engineer and the attorney for close association with fellow workers or professional colleagues. To protect themselves against arbitrary action, and to promote their professional interests, they will begin to organize, nay, they already have organized their local and national societies. In many lines this tendency toward local and national organization has been spontaneous; in others it has been encouraged by the American Federation of Labor and other existing organizations. The result has been the creation in recent years of an extensive array of organizations of municipal and other civil employees, although the movement has not yet gone as far in the United States as it has in England and certain continental European countries.

To many persons this general tendency has appeared to be fraught with serious dangers. There is, in fact, always the possibility of excessive or unwise action even in the best of movements. In this case the danger is that of a divided allegiance, as evidenced in the Boston police strike a few years ago. Is the policeman's loyalty to his union and his supposed class interests to be such that he may strike at the union's behest against the city and state to which he has given his oath of service? May he leave the public unprotected, or may the teachers quit the schools and the postal employees as a body refuse longer to handle the mails? The citizen instinctively recoils against such a thought. He feels that somehow the government employee is in a class by himself, and that for him to strike is far worse than for railroad men or milkmen or coal handlers to go out. It seems to him that the services provided by the government are in general so essential that they should not be interrupted upon any pretext arising out of the supposed rights of the employees.

From the point of view of the employees themselves, however, the situation is a different one. They sometimes have grievances as real as those of men who are employed entirely by private corporations. The public is by no means always a perfect employer. While in most cases government employees are willing to forego the right to strike, they do insist with increasing vehemence upon their right to organize and to use all possible legitimate means other than the strike to bring their case before the public and the government. It is not wise, therefore, to attempt to suppress all organizations among employees even if it were possible to do so. On the contrary, much good may, in the long run, be expected from the association of employees in their

various societies and unions. Their national and state associations are excellent for the centering and distribution of technical information. They serve also to build up traditions and standards which help to raise the whole level of the work done in different lines. They become responsible in their attitude toward the betterment of the service, and particularly so where they are consulted by department heads and legislators. They come, indeed, to exercise a powerful influence. In England there has been organized a National Association of Local Government Officers (NALGO), which has become one of the strongest forces in that country insisting upon the maintenance of high standards in the local services. Such organizations will be particularly strong in their opposition to the spoils system and to the appointment of grossly inferior persons to the service. It is true that the United States has a larger area and less uniformity in municipal institutions than England has, yet in spite of these handicaps it is not impossible to do to some extent here what has been done in England. Of course the success of such a movement will depend upon the municipal service being made substantially permanent and professional. No *esprit de corps* of any general utility can be built up as long as the local offices are filled in succession by a series of untrained local politicians.

An organization of local employees within each city could probably also, under proper guidance, be made a strong force toward the upbuilding of more efficient administration. We are inclined to think that policemen and teachers organize merely to raise their pay and to shorten their hours, or in other words that their motives are entirely selfish. There is much to support this view, no doubt, yet it is true that once organized these different bodies of employees begin to assume, as we have said before, a more responsible attitude toward their work. The very power which they wield necessitates this change. They can be made the sternest critics of corruption and inefficiency in their own ranks, for they come to recognize that public support will be accorded them only as they do their work well. In the past when the political boss gave them their positions in the service they could to some extent rely on him to protect them in sloth and the waste of public funds. To-day the conditions are gradually changing. The boss has little interest in employees under the merit system. The "invisible government" is being weakened, and the municipal employees are being brought more directly under the control of the visible government and of the public opinion which stands behind it.

The employees must, therefore, face the new situation and strive to improve their work as best they may.

It is for this reason that some persons have gone so far as to propose a sort of self-government for employees in the municipal service. It is felt that the employees through their organizations should be permitted to elect committees to consult with department heads and councils in the working out of problems, that the employees should be permitted and encouraged to suggest changes in methods of administration, and that they should be represented on committees for the discussion of grievances and for the discipline or removal of fellow employees. Suggestions of this nature are obnoxious to many persons who think it will result in weakening still more the power of the department heads over their employees. Instead of sharp command and strict obedience, there will be conference and compromise. But if a recognition of the right of employees to be consulted results in adding their wisdom to that of the department heads, and in making them feel more responsible for the results of departmental action, there may be more gain than loss to the public. As yet, of course, the various experiments along this line have been too little tried in this country to warrant any positive conclusions, but if our experience with other reforms is of any value a change to more self-government in municipal administration will not yield either all good or all bad results.

The removal of employees. The problem of removals from the municipal civil service is one which American cities have not as yet settled. Where the spoils system prevails the department heads commonly have the power to remove subordinates without hearing and without specification of reasons. As to the larger cities this situation is very much a thing of the past, although it still seems to prevail in some services. Where the merit system has been put into effect the employee is supposed to have the right to hold his position indefinitely, conditioned upon good behavior and the giving of effective service. As a general rule the head of the department is given power to suspend employees for cause without pay for a period of thirty days, more or less, and sometimes he is empowered to demote employees or to use other disciplinary measures. Some cities go even so far as to permit the department head to remove employees for cause, upon condition that he file his written charges with some public officer and give the employee an opportunity to write out an answer or to be heard in reply. In such cities an appeal to the courts by writ of certiorari is sometimes permitted. Elsewhere the provision is

that the removal cannot take place except upon the order of the civil service commission itself, or else the commission is authorized to reinstate a removed employee after an appropriate hearing.

Clearly the fundamental question is whether the department head or the civil service commission shall have the power of removal. The department head is responsible for the work in his department. He knows or can know perhaps better than any one outside whether a particular employee is or is not doing effective work, whether he is capable of coöperating with his fellows, and whether he is otherwise fitted to be a member of the service. It would seem, therefore, that for the good of the service the department head should have the power to remove for good cause. The employee himself will be partly if not fully protected if he is given the right to a hearing. The removing officer will hardly dare to flout both the law and public opinion, and there is little danger of political abuse of the power if the successor to the person removed must be chosen by examination under the merit system.

On the other hand, it is argued that with the power of removal in his hands a department head may remove men for personal, political, or religious reasons, merely trumping up charges to strengthen his case with the public, and that therefore the civil service commission, which exists to support the merit principle, should be permitted to make the final decision in removal cases. This argument is not entirely conclusive. A department head needs employees with whom he can work in harmony, and who will actually perform their duties. If he knows that he must convince a civil service commission of the correctness of his position in each case, he will in many cases prefer to suffer inefficiency and discord in the department.[7] The situation is even worse where the department head removes an employee or brings charges against him, and the civil service commission, after hearing the case, retains or reinstates him in his position. In such a case the department head himself might feel called upon to resign.

All things considered it would seem that the employee should have a single and not a divided responsibility, and that it should run to the department head. Furthermore the employee's rights will probably be adequately protected if he is given the right to be heard at removal

[7] On the other hand a department head is frequently afraid of the political consequences of making removals on his own initiative, and it may be that in such cases a civil service commission with the power of removal would make just as many or even more removals for the good of the service.

hearings, and if the civil service commission is given the power to conduct the hearings in an impartial manner. Furthermore, a more general practice of transferring employees from one service to another without undue publicity would probably solve many of the difficulties due to lack of harmony. Where there is proved incompetency, however, outright removals should take place. For some employees the fear of losing their positions is an indispensable incentive to assiduous labor, although it is not the one upon which most reliance should be placed.

Retirements and pensions. We come finally to the problem of the aged and the incapacitated employees. It was once thought by many persons that the giving of pensions was a matter of philanthropy, but we are coming to realize that it is in fact a matter of economical administration. When we observe that as a matter of fact cities without pension systems do not retire those employees who have long since ceased to give effective service, but prefer to keep them on the payrolls and often without reduction in pay, we must admit that a pension system may have considerations of economy and efficiency in its favor. Mr. Lawson Purdy, formerly head of the department of assessments in New York, and at one time president of the National Municipal League, made a striking statement upon this point a few years ago. "In my own department in the city of New York," he said, "we have had old men whose places were, after their death, filled for one-third the annual salary by men who did twice the work. Now just see how much cheaper it would be if those figures were 50 per cent true to retire the old man on half pay and hire a man for less than half of his former pay to do the work better and do more work than he did in his declining years."[8]

Here we have the central argument for a pension system, but not the only one. It is not merely that a few aged employees are themselves incapable of doing full work, but also that to some extent the work of the more efficient employees is slowed up by the relative inefficiency of others. Then too, beyond these considerations of economy there are the questions of justice and security for the employees. Especially in the middle and upper levels of the service, city employees are probably somewhat underpaid, and they may be considered to have at least a moral although certainly not a legal claim upon the city for something beyond their regular compensation. A city is, after all, something more than a profit-seeking private corporation. As it has

[8] "Municipal Pensions," in *National Municipal Review*, vol. 7, p. 16 (1918).

the welfare of all its citizens at heart, so it must give some special consideration to those who perform its services.

Notwithstanding these various arguments it has taken American cities a long time to come to the point where they are willing to give full and frank consideration to the pension problem. It is a phase of the personnel problem which was not at first recognized. Firemen, policemen, and other classes of employees, drawn together by common interests and needs, began long ago to organize various relief organizations for the purpose of helping each other out in cases of sickness and death. Their funds were raised by small dues, benefit dances, bazaars, baseball games, and direct public solicitation. The amounts which could be raised in these ways generally proved to be inadequate. At best they afforded only funeral expenses, partial help toward payment of doctors' and hospital bills, and perhaps a few hundred dollars for the widow to tide her over until she could make more permanent living arrangements.

The next step in the development of pensions was generally to ask the legislature to authorize the city to devote the proceeds of a small tax, frequently only a fraction of a mill, to the purposes of the relief associations, to be administered by the latter. Along with this development came the movement to give free medical and hospital service to sick and injured employees at public expense. A number of the larger cities appointed special physicians at fixed salaries to give this free service. A bit later, with the spread of the workmen's compensation movement the cities in a number of states were compelled by law to give compensation at fixed rates, monthly or in lump sums, to all employees who were disabled in the course of their duties, and compensation to the heirs in case of an employee who was killed. This did not touch the case of the aged or feeble but uninjured employee, however. In fact all the measures mentioned in this paragraph were but an approach to the real problem, yet many cities have not gone beyond this point.

When once the public authorities had begun to appropriate definite sums of public money for relief and pension work, the next step in the progressive development of a pension policy became evident. On the one hand the authorities were not content to leave the expenditure of public funds wholly in private hands. On the other it soon became apparent in many places that there had been no careful estimate of the cost of pensions and that there had been no attempt in most cases to provide pensions for all worthy employees. Policemen,

firemen, and teachers, who were usually the first to be provided for, were of course the largest separate groups, yet they did not comprise the entire civil list, and even as to them the pension systems devised were in many cases financially unsound. Although pensions at a certain rate from and after a certain age of retirement may have been promised, the income of the fund and the reserves therein were inadequate to meet the legal claims upon it. A number of pension funds were found to be actually bankrupt. The systems were in need of drastic overhauling, which some of them soon received.

To-day a number of cities have pension systems which are considered by experts to be financially sound. This means that they have sufficient reserves and assured income to guarantee the payment of pensions or annuities to all beneficiaries at the age of retirement expected or fixed in the law. Of course an extreme calamity which took away the lives of a large number of municipal employees at one time might upset those which guarantee large sums in case of death in line of duty, but it would probably not be feasible to provide against such a contingency.

No two municipal pension laws appear to be identical, yet they follow generally certain well defined lines. As a rule the employee contributes from year to year a portion of his salary. This contribution is duly recorded to the credit of the particular employee, and is invested along with other contributions by a retirement board in sound interest-bearing securities. Thus the money accumulates interest from year to year. The city also contributes sums equal to, or even in excess of those put in by the employee, and this money is also invested. The city also generally pays the expenses of the pension administration. Thus no part of the employee's contributions is used to pay salaries or expenses for the pension bureau. It is customary, however, to give the employees some representation on the so-called pension or retirement board. The amounts of the contributions of both the city and any particular employee are calculated in advance on an actuarial basis, that is as an insurance company would make the computation, with full consideration of (a) the age of retirement and the probable life-expectancy of those who retire, and (b) the amount of the pension or annuity to be paid. It is obvious that $1,000 will buy a larger annuity or pension for a man retiring at age 70 than for one retiring at age 50, but just how much larger can be determined only by careful actuarial reckoning. If the employee resigns or is dismissed before the age of retirement, he usually gets at least the full amount

of his own contributions plus interest. If he dies a natural death before the age of retirement, his family will receive his own contributions and usually also those made by the city up to the time of death. If his death is occasioned by his service for the city, still better provision is made for his family, and there may be workman's compensation in addition. If the employee remains on the payroll up to the time of retirement permitted or required by the law, he receives whatever annuity can be provided from the combined contributions of himself and the city with interest to the time of retirement. For the good of the service there is usually specified a definite compulsory age of retirement, and a somewhat earlier optional age of retirement, but a retirement board is authorized to make certain exceptions. In administering such a law it is, of course, easy to lose sight of an important purpose in passing it, namely to bring about compulsory retirement of aged and incapacitated employees.

The points to be remembered about municipal pension systems are, then, that to be sound they must be worked out on an actuarial basis; that they normally call for contributions by both the city and the employee to a special fund; that the employee's contributions, with interest, can usually be drawn out by him whenever he leaves the service; that special provisions are made for those who die before the age of retirement either from ordinary causes or in the course of employment, as well as for those who are injured in the course of employment; and that at the age of retirement an annuity is provided for the employee from the total fund accumulated from both his own and the city's contributions, with interest. Under such a system the employee has a definite interest in and responsibility for the pension fund, and he is usually represented on the boards which administer the funds.

No one would deny that the provision of pensions adds something immediately to the obligations of the city. The reason for having a pension system provided is, however, ultimately to give complete justice to the employee and at the same time to enable the city to retire aged employees in order to put younger and more active workers in their places. If a city is niggardly in its pension payments, it will also lose in large part the ultimate gain in efficiency which will flow from the power of compulsory retirement of employees. At the same time the adoption of a pension system does not prevent the employees from supporting privately whatever benefit and relief associations they may deem necessary. It does, however, make such associations less

important, and also relieves the city from the necessity of contributing public funds thereto.

Conclusion. In this discussion of the municipal civil service we have been compelled to deal with many matters and to cover a large amount of ground. Instead of discussing merely the organization and the ordinary work of the municipal civil service commission in enforcing the merit system, we have tried to show something of the problems (a) of how to make the municipal service more genuinely attractive to men and women of ability and training by providing adequate compensation, assured tenure, opportunities for promotion, and good working conditions; (b) of training for the municipal service both those who are about to enter it and those who are already in; (c) of the proper selection of employees, with regard not only to defeating the efforts of the spoilsman, but also with an eye to the more advanced methods of examining applicants; and (d) of the maintenance of efficiency in the service, under which heading we considered the questions of the standardization of positions and salaries, the various incentives to good work, removals and discipline, and retirements and pensions.

If anything stands out clearly as a result of this brief sketch of the problem it must be that citizens and municipal officers in most cities need an entirely new and broader conception of the personnel problems of municipal governments. We must not think, of course, that we have to discard all the methods and the aims of the civil service reformers of a generation ago. On the contrary, their work is no less important to-day than it was when it began. The spoils evil has not been entirely eliminated from city administration, far from it, and there is always danger of its return. Whatever gains have been made against it must be consolidated, to serve as a base for further attacks upon the whole problem. Civil service reform, in the older sense, needs to be absorbed into and to be made a part of, a new movement which will serve to round out a complete program of municipal personnel administration. So much good has already been accomplished that there is almost every reason to hope for still greater progress in the decades to come.

REFERENCES

The literature on the subjects of civil service reform and public personnel administration is now a very extensive one; and since we have used relatively few footnotes in these chapters it will be well to list some of the more important works.

For the *spoils system* in general see the references at the end of Chapter

IX. The struggle for civil service reform (*i. e.*, for the *merit system*) in the national government will be found recorded in Carl R. Fish, *The Civil Service and the Patronage*, New York, 1905; William D. Foulke, *Fighting the Spoilsmen*, New York, 1919; in various writings of George W. Curtis, Carl Schurz, Charles W. Eliot, and Theodore Roosevelt; in the *Proceedings* of the National Civil Service Reform League, in its miscellaneous publications, and in its official publication, *Good Government*. Throughout these various writings and publications will be found items concerning the spoils system in cities.

The *municipal civil service* problem is discussed in W. B. Munro, *Municipal Government and Administration*, vol. II, ch. 24; in C. C. Maxey, *An Outline of Municipal Government*, ch. 5; in L. F. Fuld, *Civil Service Administration*, 65 pages, New York, 1921, in various chapters of E. A. Fitzpatrick's *Experts in City Government*, and in chapters 2 and 3 of C. R. Woodruff's *A New Municipal Program*. In addition considerable attention is paid incidentally to the municipal problem in A. W. Procter's work, *Principles of Public Personnel Administration*, New York, 1921. Some of the newer phases of the problem are stressed in Procter, and also in the following: Governmental Research Conference of the United States and Canada, *Report of the Committee on Civil Service*, 1922, also entitled "The Character and Functioning of Municipal Civil Service Commissions in the United States"; *National Municipal Review*, vol. 12, no. 8, August, 1923, this whole number being devoted to "A committee report with comment pro and con" under the general title "Employment Management in Municipal Civil Service"; *Public Personnel Studies*, a monthly periodical published by the Bureau of Personnel Administration, Washington, D. C.; and in W. C. Beyer, "Employment Standardization in the Public Service," supplement to the *National Municipal Review*, vol. 9, pp. 389–403 (1920). Reports are available of standardization surveys covering in whole or in part the services in New York, Chicago, Philadelphia, Detroit, Cleveland, St. Louis, Los Angeles, Buffalo, Milwaukee, Minneapolis, Rochester, and other cities, as well as the services of the federal government and of several of the states. The civil service laws, and annual reports of the commissions, are also available for a number of large cities. A "Draft of a civil service law," and also a "Draft of a civil service law for cities," have been published by the National Civil Service Reform League. Reports of the proceedings of the annual meetings of the Assembly of Civil Service Commissions are excellent for presenting the commissioners' point of view.

Training for the municipal service is dealt with in Fitzpatrick's work, mentioned above, and in the *Preliminary Report of the Committee on Practical Training for Public Service* printed in the *Proceedings* of the American Political Science Association, 1913; in *Municipal Research*, no. 68, for December, 1915, which is a special number devoted to training for municipal service, and in Bulletin No. 30, 1916, of the United States Bureau of Education, entitled *University Training for Public Service*. The latter includes a bibliography.

Municipal pensions problems are considered in Lewis Meriam, *Principles Governing the Retirement of Public Employees*, New York, 1918; in a report

of the committee on pensions of the National Municipal League entitled "Pensions in Public Employment," prepared by Paul Studensky and published as a supplement to the *National Municipal Review*, vol. 11, pp. 95–124 (1922); in Mr. Studensky's volume on *Teachers' Pension Systems in the United States*, New York, 1920, and in various studies by the same author of state, municipal, and teachers' pensions published by the New Jersey State Chamber of Commerce in *State Research* during 1918 and 1919; in the *Report of the Pension Laws Commission of Milwaukee*, 1920; *Report of the Commission on Pensions* (Massachusetts), Boston, 1914; *Report of the Commission on Pensions* (New York), New York, 1916; and in other reports of this type.

Dr. Lent D. Upson's *Syllabus of Municipal Administration* cites a number of works which deal with the problems discussed in this chapter.

CHAPTER XX

MUNICIPAL EXPENDITURES AND BUDGETS

MONEY EXPENSE *VS.* REAL EXPENSE

Everyone is aware of the fact that the money expenditures of government have shown a considerable increase in recent years. We are conscious of this situation not only because tax bills are larger than they used to be, but also because the figures are being constantly reiterated in newspapers and periodicals. It is important for us as students of government, therefore, to examine the problem with a view more to understanding it than to finding grounds for the adverse criticism of public officials.

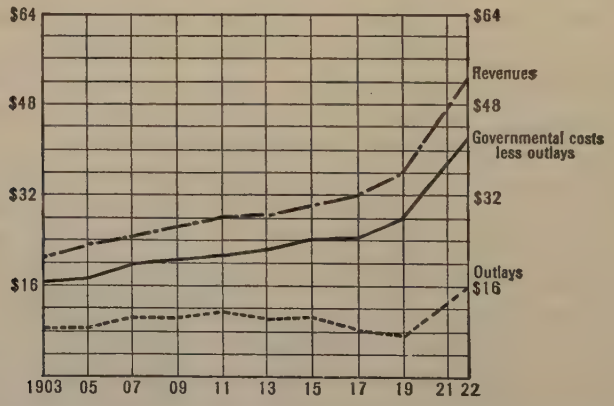
The United States Census Bureau recently reported the situation to be as follows: From 1913 to 1923 the national government increased its revenue collections by 380 per cent. From 1912 to 1922 the state governments increased their revenues by 183 per cent, the counties theirs by 141 per cent, and all incorporated places of 2,500 inhabitants or more enlarged their revenues by 80 per cent. Had the figures been given in terms of "expenditures" instead of in terms of "revenues" the results would have been nearly the same. Briefly stated, at the end of the ten year period the national revenues and expenditures were nearly five times as large as at the beginning, the state revenues and expenditures nearly three times as large, the county revenues and expenditures two and one half times as large, and the revenues and expenditures of cities nearly twice as large.

On the basis of this showing it is obvious that city expenditures have increased relatively much less than those of counties, states, or of the national government. This does not, however, tell the entire story. National expenditures, on account of the war, had been much higher from 1918 to 1921 than they were in 1923. In the latter year they were already on the down grade, whereas cities, for various reasons, had been slower in reaching the peak of expenditures and had not, by 1922, been able to benefit as yet from forces which are destined to bring about a slowing up of the increase if not an actual decrease in

expenditures. Furthermore, the figures given by the Census bureau were stated in aggregate sums expended without regard to population served. Now, it is a fact commonly known that cities must increase their expenditures for services as their populations increase, and it is also true that cities grew relatively much more rapidly in population from 1912 to 1922 than did the states or counties or the nation as a whole. Indeed, the increase for cities of 2,500 and more population between 1910 and 1920 was about 28 per cent, whereas the national increase was only a little over half of that. We can, therefore, without difficulty substantiate the assertion that per capita city expenses have grown less rapidly in recent years than have those of the other important units of government.

Even when considered on a per capita basis, however, municipal expenditures have increased greatly in the past decades. We use here the Census bureau figures for a group of 146 large cities which have been covered in detail by the bureau's publications on the *Financial Statistics of Cities* since 1903. In 1903 the governmental cost payments of these cities, exclusive of capital outlays, amounted to $16.41 per capita; in 1909 they had risen to $20.15; in 1915 they were $23.93, in 1919, $28.07; in 1921, $38.04; and in 1922, $42.93. The figures are given in more detail in a footnote along with figures for outlays and for revenues.[1]

[1] The following diagram shows (a) the per capita governmental cost payments less outlays; (b) the per capita outlays; and (c) the per capita revenues of 146 leading American cities for which the Census bureau figures are fairly complete since 1903.



The per capita figures upon which the curves are based are as follows:

On the basis of such comparative financial statistics city governments are to-day being severely arraigned, and we hear many charges of extravagance, waste, and even corruption. While it is difficult to ascertain all the facts, one point is fairly clear. The expenses and the rates of railroads and of public utilities have gone up nearly everywhere in recent years, and so have the costs and the prices in other branches of private industry. These increases we know have been due not so much to waste and extravagance, nor even to increased or decreased volume of business, as to a great change in price levels. Although the business world esteems it more or less a matter for pride that bank clearings are now higher than ten or twenty years ago, that real estate values are higher, and that the volume of private business as measured in dollars is larger than in the pre-war years, yet in fact all of these things are due in large part simply to the higher prices now prevailing.

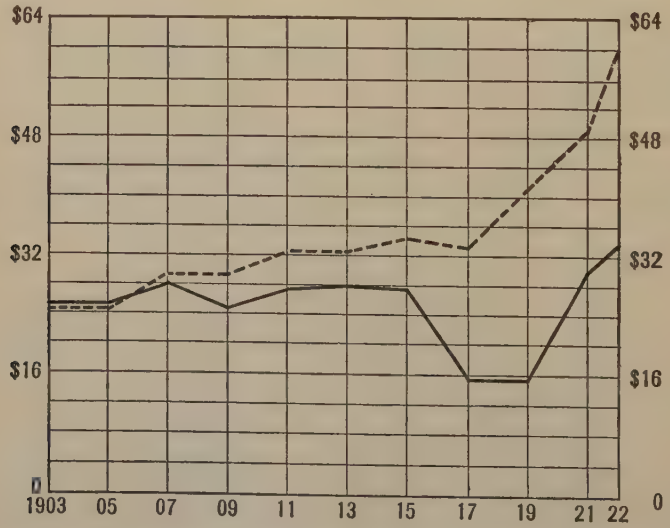
If all this be true, why should we be surprised that government, too, costs more to-day in dollars and cents than it did in earlier years? Let the ideals of government be never so high, the things with which it must work are strictly of this world. It must hire the services of laborers, mechanics, and clerks, and must pay them enough to enable them to buy food, clothing, housing, and education for themselves and their children at present prices. It must buy stone and asphalt and cement and steel for paving roads and building bridges; brooms and mops and soap for cleansing school buildings, court-rooms, and offices; coal and oil for the heating plant; pencils, ink, blankbooks, paper, and typewriters for office use. It is important to keep in mind, too, that the market in which it buys supplies and materials is one over which it has little or no control. It may succeed through good organization and management in getting wholesale prices, and that too

Year	*Governmental costs less outlays*	*Outlays*	*Revenues*
1903	$16.41	$8.23	$21.14
1905	17.25	8.32	22.79
1907	19.57	10.34	24.67
1909	20.15	10.18	26.42
1911	21.23	11.02	28.07
1913	22.17	10.29	28.55
1915	23.93	10.60	30.00
1917	24.58	8.68	31.97
1919	28.07	7.51	35.26
1922	42.93	16.08	53.57

when the market is low, but the prices are in general determined by forces beyond its power to influence.

In order to bring out the importance of considering the purchasing power of money when considering municipal expenditures, we present herewith a figure in which the per capita expense of city government in dollars and cents is compared with the per capita purchasing power of the money expended.[2] The curves in this figure show very clearly that from 1903 to 1915 the *purchasing power* of municipal expenditures per capita increased only about 12 per cent, from $24.68 to $27.64. Then followed a rapid decline in the purchasing power of municipal income, due to the wartime rise in prices, until in 1918 the per capita purchasing power of the city's income on the wholesale market amounted to only $14.69, or a little more than half of what it was in 1915. From that point on municipal expenditures further increased while prices were receding, but even in 1922, the last year

[2] In the following figure the broken line shows in dollars and cents the per capita governmental cost payments, including outlays, of 146 large cities for which the data are complete since 1903. The unbroken curve shows the per capita purchasing power of the same cost payments, using R. G. Dun & Co.'s wholesale price index to make the corrections. According to the Dun & Co. figures, 99.4 cents would have purchased goods at wholesale in 1903 which it took $2.60 to buy in 1920. The 1921 returns cover all cities reporting in that year, but for all other years the same 146 cities are used.



The per capita figures upon which these curves are based are as follows:

for which we have official figures, the purchasing power of the revenues had increased only about 23 per cent more over the 1915 figure. What the municipal services lost during the years 1916–1920 has not yet all been made up, and that part of the loss which was suffered by faithful employees through the depreciated purchasing power of their salaries and wages probably never will be made up to them.

But we have to consider not only the purchasing power of the money expended. What the citizens receive for their money must also be evaluated. In the first place, the cities are now performing many more services than they formerly did, and they are probably performing many of them better. We refer the student once more to the pages in which we discussed the growth of functions in the city of Detroit.[3] It is in the years since 1900 that this growth of municipal activities has been most notable. Furthermore, there has been some increase of municipal ownership, although this item is not large. In some cities where the citizen formerly bought his electricity and his street railway transportation from a private company, he is now buying them from the city. What he formerly spent for these services went into the coffers of a private corporation, and was not reported as a governmental expenditure or revenue, as it is in some cities to-day. Finally it is worth while mentioning that the cities dealt with were on the average considerably larger in 1922 than in 1903. This fact has some importance because of the known fact that living expenses and the

Year	*Governmental cost payments per capita*	*R. G. Dun & Co's wholesale price index*	*Corresponding purchasing power of governmental cost payments*
1903	$24.64	99.4	$ 24.68
1905	25.57	98.3	26.01
1907	29.91	113.6	28.43
1909	30.33	119.0	25.48
1911	32.25	118.1	27.30
1913	32.46	116.3	27.91
1915	34.53	124.9	27.64
1917	33.26	211.9	15.69
1919	35.58	233.7	15.22
1921	49.03	159.8	30.68
1922	59.01	173.7	33.97

[3] See pp. 401–405.

expense of doing business are higher in large cities than in small quite regardless of general price levels.[4]

In conclusion we may state a few propositions by way of summary as well as a few others which we shall not have the space to discuss. (1) To state the expense of government in terms of money is of little value unless we understand the purchasing power of the money used. (2) One of the best tests of the expense of government would be the percentage of the people's total income taken for the purpose. (3) Even the latter test is inadequate unless we also know the range of functions being performed at the particular time. To compare the cost to-day of providing an unknown number of different services with the cost some years ago of providing a smaller but equally unknown number of services is of little value. (4) Comparisons of costs as between different cities are of little value unless we know the conditions prevailing in the places compared. (5) As a rule, large cities have higher per capita expenses than small. In city government, large scale production does not in most cases bring reduced costs.

(6) On the basis of what we know of recent history, it would seem that in periods of slowly rising prices cities have little difficulty in increasing their revenues sufficiently from year to year to provide adequately for their services. (7) When prices advance rapidly, however, cities are so bound by existing laws and property assessments as to be unable quickly to increase their revenues to meet the emergency. (8) But when prices begin to fall again after such a rapid rise, city governments find themselves still far behind in the matter of providing services, and they must continue to increase expenditures to some extent merely to make up for ground previously lost. The last three propositions are merely tentative conclusions from the experience of American cities since about 1900. It would be difficult to prove their validity under any and all conditions.

[4] In 1922 the per capita governmental cost payments for the five census groups of cities were as follows:

		All governmental costs	*Expenses of general depts. only*
Group I,	Cities of 500,000 or more inhabitants,	$66.88	$39.31
Group II,	" " 300,000 to 500,000 "	64.29	36.97
Group III,	" " 100,000 to 300,000 "	48.71	27.50
Group IV,	" " 50,000 to 100,000 "	44.94	25.44
Group V,	" " 30,000 to 50,000 "	44.38	25.01

See *Financial Statistics of Cities*, 1922, p. 177.

THE OBJECTS OF EXPENDITURE

The immediate objects for which cities spend their revenues have already been suggested. Year in and year out it is probable that *personal services* constitute the largest single item in the municipal budget. Various estimates have been made as to the relative amount of money spent for the hire of men and women as compared with other objects of expenditure. The estimates run from 40 or 45 per cent, to 70 or 75 per cent. Unfortunately we have no adequate statistics on this point. The ratio undoubtedly varies greatly from city to city, and from time to time in the same place. In a city which does much of its work by the contract method, the personal service item may be fairly low; in one which relies upon the day labor method it will be considerably larger. Perhaps it is safe to say that on the average the larger cities pay 40 cents or more out of every dollar for personal services, which again illustrates how important is the personnel problem.

Leaving this phase of the subject, we find a considerable difference of opinion among budget-makers as to the proper classification and designation of other expenditure objects. The following list, taken from a study of municipal budget making, will suggest the various things for which cities spend money.[5]

Supplies and materials (office supplies, fuel, food, chemicals, lumber, paints, cleaning compounds, etc.)

Communication, transportation, travel (postage, telephone and telegraph, express, drayage, railroad fare, etc.)

Subsistence, care, and support (of persons and of animals.)

Printing, publishing, advertising.

Light, heat, water, power (gas, electricity, etc.)

Repairs, replacements, alterations (to buildings, equipment, machinery.)

Rent (of offices, buildings, lands, etc.)

Insurance, and indemnity bonds (fire insurance, automobile insurance, bonds of officials, workmen's compensation insurance.)

Refunds, judgments, claims, etc.

Interest (on bonds, on temporary loans, on judgments, etc.)

[5] Morris B. Lambie, *The Municipal Budget,* published by The League of Minnesota Municipalities, Minneapolis, 1923. See also Buck, *Budget Making,* chaps. IV, V, his work on *Municipal Budgets and Budget Making,* announced for publication early in 1925, and the budgets of New York and other cities.

Equipment (furniture, office and household equipment, plant equipment, instruments, vehicles, machinery, uniforms, livestock, etc.)

Buildings, new construction, and improvements (buildings, streets, bridges, sidewalks, paving, water works, sewer systems, municipal utilities, parks, etc.)

Purchase of land (for streets, parks, water supply, schools, etc.)

Payment of debt.

Contingencies.

There is no great value in memorizing a list of expenditure objects of this kind, yet the wisdom of having a definite classification in connection with budget making must be patent to all. If a city is to develop reasonable policies in the purchase of the various objects and services it needs, it must know what it is about in making every purchase. Thus it is clear that some of these objects of expense come under the heading of "current expense," that others are "permanent improvements," and that still others have a different character. It may be wise to borrow money for the purchase of land, but it would be very poor policy to borrow to pay for postage and printing. Then, too, each city, having due regard to its local conditions, its rate of growth, and other factors, should be able to bring about a certain balance between the various items in its list of expenditures. Over a period of years printing should not be allowed to absorb more than a certain per cent of the budget; at least a certain amount should be put into repairs and replacements or into permanent improvements; and so on.

THE PURPOSES OF EXPENDITURE

After all, however, the municipal statesman is not so much interested in the particular objects for which money is spent as he is in the purpose of the expenditure. What good is to come of it all, is the question he is prone to ask. In earlier pages we have given two slightly different classifications of the purposes which city governments attempt to accomplish.[6] The Census bureau has developed a classification of expenses which may be summarized here as it is the one most commonly used in this country.[7] *Current expenses*, which are distinguished from *interest* and *outlays*, are divided into two great classes, namely expenses of general departments and expenses of public service enterprises. This division is made on the ground, primarily, that the latter

[6] See pp. 404–405, 413–415, and also p. 438.

[7] See *Financial Statistics of Cities*, 1922, pp. 29, 34, 41.

are paid for generally out of the earnings of the enterprises themselves, whereas the expenses of general departments are met mainly out of taxes and other revenues.

We all understand, of course, what the *public service enterprises* are. They include water supply systems, electric light and power facilities, gas supply systems, markets, scales, docks, wharves and landings, cemeteries and crematories, public halls, subways for pipes and wires, street and other railways, and miscellaneous other enterprises. The somewhat limited extent of municipal ownership in the United States is indicated by the fact that the 261 cities of over 30,000 population in 1922 had current expenses of only $2.75 per capita for all these services, or less than one-tenth of the amount expended by general departments; and almost two-thirds of this $2.75 went for water supply. It will be remembered, of course, that interest and outlays are not included in these figures.

The current expenses of *general departments* constitute together the largest item in the annual cost payments of cities. For the year 1922 the per capita expenditures of all cities over 30,000 for all purposes stood in the following order:

1. Current expenses of general departments..... $33.15, or 57.8 per cent.
2. Outlays for all departments..... 15.95, or 27.8 per cent.
3. Interest for all departments..... 5.52, or 9.6 per cent.
4. Expenses of public service enterprises..... 2.75, or 4.8 per cent.

Total governmental cost payments..... $57.38

It is of interest to note also the definite governmental purposes for which the general city departments made current expenditures in 1922, and the amount per capita expended for each purpose. The figures are as follows:

1. Education, including libraries, per capita..... $12.91, or 38.9 per cent.
   Of this amount $12.50 went for schools, and $.41 for libraries.
2. Protection to person and property..... $ 6.66, or 20.1 per cent.
   In 1921 about one-half of the amount expended under this head went to police, about five-twelfths to the fire department, and about one-twelfth to miscellaneous.
3. Health and sanitation, including sewerage, street cleaning, garbage and refuse collection, etc.... $ 3.25, or 9.8 per cent.
4. General government, including expenses of the council, of chief executive officers and boards, of financial and legal offices, of the city clerk,

	city engineer, civil service commission, city planning board, the maintenance of general governmental buildings, the conduct of elections, and the city courts	$ 2.94, or	8.9 per cent.
5.	Highways, including work done for private persons for compensation	$ 2.87, or	8.7 per cent.
6.	Charities, hospitals, and corrections	$ 2.08, or	6.3 per cent.
7.	Parks and recreation	$ 1.09, or	3.3 per cent.
8.	Miscellaneous functions, such as the provision of pensions for employees, mothers' pensions, trust funds, judgments against the city, and undistributed expenses	$ 1.34, or	4.0 per cent.

How do these expenditures of 1922 compare with those of twenty years ago? A study of the expenditures of the larger cities from 1903 to 1922 reveals the fact that the per capita expenses for the general departments have increased in money terms a little more than 120 per cent. In other words, they have a little more than doubled. All general departments have not shown equal increases, however. School expenses have more than trebled, rising from $3.86 in 1903 to $12.50 in 1922. Park and recreation expenses also trebled, mounting from 35 cents per capita in 1903 to $1.09 in 1922. Health and sanitation took $3.28 in 1922 as against only $1.21 per capita in 1903, which was almost a trebling of this item. Expenditures for charities, hospitals, and corrections more than doubled, going from 86 cents per capita to $2.08. The departments which have just been named stood relatively in a much more favorable position at the end of the period than at the beginning. The remaining departments fell somewhat behind the average increase of 120 per cent. In three departments expenses in money terms almost exactly doubled, general government expenses rising from $1.46 to $2.94 per capita, while protection to life and property (police and fire departments) increased from $3.35 to $6.66, and library expenditures rose from 19 cents to 41. One department lost relatively still more ground, highways expenses increasing from $1.64 to $2.87 per capita. If the figures which we have here quoted are as reliable as we have a right to expect them to be, we have in them important evidence of a shift in emphasis in municipal government. Our cities are spending relatively more than ever upon education and the social welfare activities, and relatively less upon highways and the protective functions. It is surprising that libraries have not gained more than they have.

We must qualify our conclusion in the preceding paragraph to some

extent. It is obviously incorrect to determine the relative total expenditure on different functions on the basis of current expenses alone. Such a department as highways requires annually large capital outlays not reported as current expenses, whereas the capital outlays required by the police or the health department are much smaller. In 1922, for example, outlays on highways amounted to $4.85 per capita; for schools they came to $4.15 per capita; for health and sanitation to $2.12 per capita; for all other general governmental purposes combined, to only $1.56 per capita; and for public service enterprises of all kinds, $3.40. It is clear that schools rank high both in current expense and in outlays. If then the outlays were added to the current expenses for the year, education would remain as the most expensive function of all, highways would displace police and fire protection as the second most expensive service of the city, while health and sanitation would take fourth place instead of general government. Even this calculation does not take account of interest, but that item would probably be in almost direct proportion to outlays. In order of expense, then, education would still be first, highways second, protection of persons and property third, health and sanitation fourth, and general government fifth.

If we accept the general thesis that governmental expenditures are determined to a large extent by public and group demands, we should have to conclude that there are strong influences in American cities which insist upon liberal appropriations for schools, that almost equally strong groups urge appropriations for highways work, and so on, and that some departments have very little public or organized group support. To some extent this is true, but other factors must also be considered. The decision *that* education shall be supported, or that a hospital shall be built, may be one entirely beyond the control of the city. The expenditure may be one required by state law, one of the mandatory expenditures of which we speak hereafter, which may indicate the existence of a state rather than a local public opinion on the subject. A better illustration would perhaps be an expenditure for the enforcement of prohibition, on which the urban opinion may be contrary to the statewide sentiment. Furthermore when the decision has been made in favor of providing a certain service, the extent to which it shall be supported and the amount of money to be expended thereon are not entirely matters of discretion. In the nature of things some functions are expensive and others are relatively cheap. Consequently we cannot merely take the money figures and from them

come to absolute conclusions as to the extent or the intensity of the group influence or the public opinion behind the expenditure. A very small expenditure for some purpose may represent a striking victory won by some organized local group against strong opposition.

As we have just remarked, local group opinions and pressures are not alone responsible for local expenditures, nor are they always exerted solely upon the local authorities. We have many illustrations of the tendency of groups to apply to the state legislature to enact laws requiring local expenditures. A group of officials want increased salaries, the organized employees want better wages or shorter hours or more satisfactory pensions, some local interest desires the paving of a particular street, and so on. If these groups fail to get what they desire from the local budget authorities, they are not unlikely to appeal to the legislature. If the representatives from the locality support them, the legislators generally are not likely to oppose. Thus we find numerous state laws and charter provisions which impose upon cities the obligation to spend certain sums in certain ways. These are the "mandatory expenditures" to which city officials so frequently object.[8] Only a study of each city's charter and of all amendatory legislation would reveal the extent of these obligations, but it is doubtful whether really mandatory items would constitute more than 20 per cent of the average city's budget.

In addition to the legally obligatory expenditures imposed upon the city budget by outside authority, there are other obligations which a city voluntarily assumes in the first place but which thereafter require a considerable and regular expenditure and are in that sense mandatory. When a city has borrowed money, it must either pay the interest thereon from time to time and also ultimately repay the principal, or it must repudiate its debt and thus seriously injure its credit. Having started a building or a land-buying or a paving project it is almost compelled to see it through lest it lose the money already invested and have nothing to show for it. Furthermore, when the state offers subventions (state aid) to cities on condition that they make equal or proportionate expenditures for schools or some other purpose, local pride or the desire to obtain the state aid practically compels all cities to comply with the stated conditions. These are examples of expenditures which, while not legally required

[8] See Maxey, *An Outline of Municipal Government*, pp. 311–312, 318–319, and *Report* of the (New York) Special Joint Committee on Taxation and Retrenchment, Retrenchment section, 1920, pp. 109–115.

in the first place, become practically inevitable, and may continue for years to consume a large part of the local revenues.

Within limits, however, the budget authorities of the city government may determine the amount of support to be given to different activities. The policy of the local legislative body is, then, an important factor in fixing the amounts of local expenditure, and also the purposes thereof. It would be futile to attempt to enumerate all the influences which may affect their decisions in matters of this nature. Dislike for a particular board or officer, a desire to distribute a certain amount of spoils, an unbiased and reasoned decision that a certain department is being too well or too ill supported,—these are but illustrations of the many factors which enter into the making of the items in the budget. There is room for a great deal of careful study in the making of appropriation ordinances, and the excellence of the local services depends to no small extent upon the wisdom with which the expenditures are planned.

What municipal councilmen need to look to is the city which they have in mind to create. Is it one in which there shall be splendid parks and boulevards, but dark, ill-ventilated houses and a high death rate, or one in which there shall be miles of well-paved streets but very few excellent schools and libraries? These are questions of immediate importance which every city needs to answer for itself. They go directly to the problems of budget-making and administration, and they bear important relationships to the present and future welfare of the city and all its people. There is never money enough to do everything, and hence there needs to be a wise selection of the purposes of expenditure.

MUNICIPAL BUDGET-MAKING

The consideration of municipal expenditures leads naturally to the problem of budget-making. When national governments make budgets they frequently spend more time in discussing the problem of revenue than they do in working out the details of expenditures. They are sometimes, as in the case of war, absolutely bound to make expenditures without full consideration, but the problem of raising the revenue is always a ticklish one. Furthermore, national and state governments have relatively more control of revenues than is the case with cities. They may enact revenue laws very much to suit themselves, and they often change their taxing systems with a view to social amelioration. Cities, on the other hand, have relatively less

power to devise new systems of revenue, and hence for them budget-making becomes essentially the problem of making up the annual appropriation bill with due regard to the limits set by the state upon the revenues which may be raised.

The essence of the budget idea is simply that of careful financial planning. Among American cities, unfortunately, the idea of financial forethought of any kind has been a plant of slow growth. With rapid population increases and constantly growing wealth, our cities felt prior to about 1900 a confidence in their ability to meet all fiscal demands which was not warranted by the facts. The mistakes of one decade, they seem to have felt, could be made good by the increased prosperity of the next. In addition many cities unfortunately fell into the control of rings of spoils-seeking politicians to whom lavish expenditures were a boon whereas careful financial planning and full publicity for the details of fiscal management would have meant the destruction of their secret powers and resources. To be sure, we should not wonder at the tardy progress of the budget idea in cities, for even the national government did not adopt a budget act until 1921. Fifteen years earlier the city of New York had set in motion a budget organization, and by 1921 a majority of the larger cities had taken steps to systematize their budget-making procedure. It is still true, however, that many cities do not have budget systems worthy of the name, and that many others do not conscientiously live up to the requirements of the budget systems they have.

Perhaps it is unnecessary to discuss the desirability of having expenditures carefully worked out in advance. Without planning, appropriations may be too small or they may be too large, but generally they will be too large. Departments are inclined to ask for more rather than less than they need. Once having the funds appropriated they generally find ways of spending them, and in the following year they are likely to ask for still more money. Without proper budget information the council must do its work more or less in ignorance of the facts. It must make appropriations, since the government must be carried on, but it cannot make them with intelligence. When the time comes for reducing the local tax burden, it may be inclined to make an arbitrary ten or twenty per cent reduction in all requests, thus penalizing the conscientious department head without seriously affecting the wasteful or extravagant one. Without adequate budget control, departments are likely to spend more than their budget allotments, or to spend the money in ways not approved. This

frequently makes necessary the making of deficiency appropriations the next year, or perhaps even the borrowing of money for current expenses before the year is out. Without printed budget information showing the costs of different departments over a period of years, the citizen lacks the very data he needs for holding elected officials responsible for their deeds.

A few definitions at this point will serve to clarify the discussion which is to follow. The *departmental estimates* are the estimates prepared by the department heads and presented to the budget-making authority. The *budget* proper is the official financial programme prepared by the budget making authority, whether budget bureau, city manager, mayor, or committee, and presented to the legislative authority for adoption. It includes the revised departmental estimates of expenditures balanced over against the estimated revenues, and proposals for revenue changes.

When the council or other legislative body of the city has approved the budget with such changes as it sees fit to make, it enacts a series of measures (ordinances or resolutions) to put it into effect. One of these is the appropriation ordinance or resolution, which allocates to each department in greater or less detail the sums which each may spend during the year. Another is the tax levy ordinance or resolution, which specifies the rates of taxation to be born by property during the year for municipal purposes. Still another may authorize certain borrowing, and so on. These measures are distinct from the budget itself. Thus the budget is usually minutely itemized, whereas the appropriation measure may specify only lump sums for bureaus or departments, on the understanding, of course, that the itemized budget will be followed as nearly as possible.

It must be obvious from what has been said that a city cannot have a true budget system if it has a disintegrated government. If the school board, the park board, and other authorities in addition to the council have independent powers of taxation, and if they may appropriate the sums which they raise in different ways without any central control, the city is still without a budget system. To bring order out of such a chaotic situation it is necessary either to integrate and centralize the government under one head, or else to establish a so-called board of estimate and apportionment with full power to adopt and to enforce a budget applicable to all the spending authorities. A number of cities now have boards of this general type, but they differ greatly in organization and in powers. Where they have been given adequate

authority, as in New York, they have again demonstrated the power of the purse by becoming practically the government of the city.

If the budget system is to be fully effective, there must also be some one empowered to prepare and to submit the estimates to the body which is to pass upon them. We distinguish at this point between "executive budget" systems and the so-called "legislative budget." Where the one who prepares and submits the estimates is a responsible executive officer who is in close contact with the various administrative departments and is aware of their needs, the budget prepared is said to be of the executive type. Where the work is done, on the other hand, by a committee of the local council or directly under its control, we call it a legislative budget system. The executive budget plan fits in logically with the city-manager plan of government, and also with the strong-mayor or independent executive plan of municipal organization. In each of these cases there is a chief administrative officer who is in a position to present a budget representing the point of view of the administrative departments. The legislative budget plan is to be found generally in cities which have the commission plan or the old council plan of organization.

It appears to be the judgment of the authorities on this subject that the executive budget plan has advantages over the other. The chief administrator can prepare a budget with more knowledge of the needs of the departments and with more sympathy for them than can a council committee. There is, also, less danger of log-rolling where the budget is prepared from the point of view of the administration. A further advantage is that when the council receives the budget estimates from the chief executive, it can take a more impartial view of what is proposed. It is not already committed, and it can perform the ancient function of all true legislative bodies of criticising and checking the executive, and of holding down the expenses in the interests of the taxpayers. In other words there is a logical separation of functions as between the executive and the legislative authorities, and the latter can hold the executive responsible for what is proposed. Finally, it should be noted that if ample time is given for the work, every request for appropriations can, under the executive budget plan, be given two separate considerations from different points of view, first from the point of view of the administration and its needs, and second from the point of view of the public.

THE BUDGET PROCEDURE

The problems of budget procedure can be best understood if the various steps in the process are taken up for analysis in order. Here we need to keep in mind that the financial operations of a city follow a definite yearly calendar. In the majority of the large cities the calendar year and the fiscal year appear to be identical, beginning on January 1 and ending on December 31.[9] In the cities of the north this is probably the best arrangement, other things being equal, except for school purposes, since most of the important public works are carried on most actively from spring to fall and must be suspended to some extent during the winter. In those portions of the south and west where outdoor work can be carried on throughout the year, there may be good reason for having the fiscal year begin April 1 or July 1. School systems had usually best have the fiscal year begin July 1 or August 1 in order to conform to the school year. Some attention should, of course, be given to the question of making the local fiscal year conform to the state and county fiscal years.

Assuming that the calendar year is used, and that tax levies are made as they almost everywhere are, for the calendar year, the budget machinery should be set actively in motion in the late summer with a view to completion of the entire budget in time for calculating and certifying to the proper officers the tax levies for the coming year. This means that the budget should be completed not later than the latter part of November or the first week in December. In some places an earlier date is prescribed, but it is not wise to have a long interval between the time of making up the budget and the time of its going into effect. Estimates of probable needs can get out of date very quickly when prices are going up or down. On the other hand there should be ample time allowed for full consideration of the budget requests. From two to three months is not too long a period.

1. The first step in the annual budget-making process comes when the budget bureau or officer sends to each spending department or agency a supply of the proper forms with a request that the department use them for estimating its needs for the coming fiscal year, and that it transmit the desired information to the budget bureau by a fixed date. It is desirable to have the forms practically the same for all departments in order that proper comparisons may be made. If a department conducts several distinct activities or has separate bureaus, it

[9] For a table of these dates see *Financial Statistics of Cities*, 1922, pp. 58–62.

is important to have separate information and requests prepared for each one. On one form the department head should list his requests for each activity or bureau by objects of expenditure, *i. e.*, personal service, supplies and materials, and so on, and this should be done in such a detailed manner as to bring out every important item and every proposed change. Thus under "personal service" there should be a return showing the number of officers and employees of each rank now employed and the number requested for the coming year. Under "supplies" each important supply needed should be separately noted, with the amounts and prices thereof. In parallel vertical columns should be entered the amount expended to date for each item during the current year, also the amount appropriated for it for the year, and the amounts expended therefor during the past one or two years. In some forms separate columns are provided for indicating proposed increases and decreases. Thus the department and bureau heads must during each year be already planning their work for the next. This is one of the greatest advantages in having a regular budget system. It promotes forethought, and discourages the idea that every problem can be treated as an emergency.

Another form to be filled out by each department is an estimate of the probable revenues to be taken in by each activity or bureau therein. The water department will have its income from water sales and other miscellaneous revenues; another department may receive much money from fees, or licenses, or permits. The information given may need to be checked up, for just as departments are likely to overestimate their need for appropriations, in order to play safe they are also likely to underestimate their miscellaneous revenues. From the council's point of view it is important to get accurate data as to probable revenues, first in order that it may know how much to appropriate to each department over and above its miscellaneous receipts, and second in order to make the annual tax levy as low as possible while still balancing the budget. For this reason, also, it is well to show precisely how much was received from each source in several earlier years.

2. As rapidly as the budget requests and the information as to miscellaneous revenues come in from the departments, the budget agency proceeds to assemble them and to make up summaries thereof from different points of view. In many cases it may be necessary to ask the departments for additional information. Informal hearings may be had at this stage in order to get full explanations of proposed in-

creases or decreases in expenditures, of new positions to be created, and of other points which are likely to occur to the council. Where there is a city manager or a mayor responsible for the administration, he may at this time make such alterations in departmental requests as he thinks wise, for it is he who must defend the whole budget to be proposed. But the budget bureau in such a case is likely to be responsible to him. Where there is no single officer responsible for the budget the budget agency is likely to do very little more than to assemble the departmental requests and to print them in a book for the use of the council with such information as seems desirable.

It is necessary for the budget bureau to give careful study also to the revenue side. First assembling all the estimates covering miscellaneous revenues, correcting them, and finding the total thereof, it must then proceed to make calculations as to the methods of raising the difference between the total budget requests and the estimated revenues. In other words it must attempt to balance the budget. A responsible mayor or city manager will make every effort to see to it that taxes are not unduly increased, for he is certain to meet with trouble in the council if he proposes additional taxation. If the city is operating under financial disabilities which limit its annual tax levy, and if the budget requests exceed all possible revenues, then extra efforts must be made to bring about reductions in the proposed expenditures. In this connection, too, there must be some consideration given to a borrowing programme for the ensuing year, since not all of the proposed expenditures can as a rule be made from current revenues. If there is a bonding limit as well as a tax limit, drastic cuts in proposed outlays may be required.

When the budget bureau has gathered all possible information, and has made all the necessary calculations and tabulations, and when the manager or the mayor, if he has the power to do so, has reduced the requests and harmonized them to a point where he feels that he can defend his financial programme, all the important estimates and tabulations are, or should be, printed together in a volume of estimates for the use of the public as well as of the appropriating and tax-levying body. If completeness of information is aimed at, this publication should contain at least the following data:

(1) A preliminary general summary, showing the proposed expenditures by departments, and the total thereof, as well as the expected revenues and the various sources thereof, with a total of revenues equaling that of the proposed expenditures.

(2) A more detailed study of revenues, with comparable information for earlier years, figures as to the assessed valuation of property, calculations showing the required tax rate, etc., and an indication of the funds into which the different revenues are to go.

(3) A separate and detailed study of the amounts which must be borrowed, with notations as to the purposes for which the money is needed, and as to the funds into which the borrowed moneys are to be put.

(4) A series of detailed studies for each department or other organization unit showing the requested appropriations by objects of expenditure, with comparable data for earlier years. If possible there should be inserted explanatory statements covering proposed increases or other changes.

(5) A less detailed tabulation classifying the requests of the departments by character and by fund. In this would be shown in separate columns how much of the expenditure proposed by each department for each object would be classified as current expense, how much as fixed charges (interest, pension payments, etc.), and how much as capital outlays, together with an explanation of the different funds from which the expenditures are to be financed.

It would be easy to think of other types of information which would be useful to councilmen and to the public. The danger is, however, that so much detail will be put in that essential points and general tendencies will be lost sight of. The budget estimates need not only to be full and complete, but also to be clear and understandable. The art of presenting financial estimates so as to make them interesting and useful is one not easily mastered, although that is a large part of the art of the capable budget-maker. It has been suggested, in fact, that the social facts which lie behind the budget, or before it, need to be written in and to be made appealing.[10] Merely to say that the health department spent $5,000 last year on infant welfare work, and that it desires $8,000 for the coming year for the same purpose, is to

[10] Fitzpatrick, *Budget Making in a Democracy*, pp. 26–30; Upson, "The Other Side of the Budget," *National Municipal Review*, XII, pp. 119–122 (1923). In New York, Dayton, and a number of other cities have been conducted so-called "budget exhibits," open to and largely attended by the public, in which the endeavor has been made to show the citizens exactly what the city government is doing for them.

say nothing particularly interesting or intelligible to the people. If it could be said truthfully, however, that the $5,000 expenditure had resulted in the saving of one hundred babies' lives, and that still more money could be used with prospects of a further reduction in infant mortality, then the popular interest might be kindled. Municipal budgets cover many phases of municipal administration which touch intimately the lives of the people.

3. The next step in the budget process is that of presenting the estimates to the appropriating body for its criticism, approval or amendment, and passage. At this, the critical stage in budget making, we are inclined to think of the British chancellor of the exchequer standing before the crowded House of Commons and delivering himself of a lengthy discourse on the government's financial proposals for the ensuing year. As a matter of fact there is seldom anything so dramatic in the presentation of a municipal budget. The mayor in the independent executive plan of city government may present the budget estimates in person, or he may merely transmit them to the council with a letter of explanation. In the city-manager plan the manager is likely to present his printed estimates in an informal way and to make no explanations until the council proceeds to analyze them by departments and items. No doubt there will be under either plan no inconsiderable amount of criticism and wrangling and much clear-headed honest debate, but it is likely to deal principally with details. Smoldering feelings of dislike for the mayor are likely to be fanned into flame when the council in the strong-mayor plan receives his budget proposals, while a city manager is likely to find himself in a somewhat friendlier atmosphere. In the commission plan, we have already noted, there is likely to be little criticism of any kind unless it comes from the public.

The public's relationship to budget making is a point which needs to be mentioned. Far more than the state or national governments, the city government is under the immediate scrutiny of its constituency. The people are near at hand and are directly interested. They have their numerous organizations for commercial, professional, vocational, neighborhood, civic, and other purposes, their newspapers, and perhaps their bureaus of municipal research. Representatives of these groups can attend both council and committee meetings with some regularity, and can also easily telephone to or call upon their councilmen. In a number of places they are given an opportunity to be heard before the council. Thus it comes about that municipal budgets are passed under

the immediate influence of the local interest groups. It is, in fact, one of the aims of regular budget procedure that there shall be this local publicity given to financial measures. The groups instead of working only in secret are brought to some extent out into the open, where all may hear what is proposed. True, if a budget is made up entirely in the dog days, the general public is not likely to show a keen interest, but from fall to spring the interest is likely to be somewhat greater, and in any case the opportunity afforded is one which the people should not relinquish.

There has been much discussion of the relative powers of the mayor and the council in the preparation and passage of the budget. This question hardly arises in the normal commission plan or city-manager plan of city government, nor can it seriously come up in cities like those of England where the people have become habituated to council government and have not given their mayors either the veto or extensive appointing powers. Both of these powers have, however, been conferred upon a large number of American mayors, and in what we have called the strong-mayor plan there has been an evident intention to give the mayor important powers of control over the budget as well. The present Boston charter is probably most drastic of all in this respect. Under its provisions all appropriations are to originate with the mayor, who is to submit to the council the annual budget of expenditures proposed. "The city council may reduce or reject any item, but without the approval of the mayor shall not increase any item in, nor the total of a budget, nor add any item thereto, nor shall it originate a budget." Furthermore every appropriation, ordinance, order, resolution and vote of the city council must be presented to the mayor for his approval. Any measure which he returns to the council without his approval within fifteen days after it was presented to him is void. Thus he is given an absolute veto upon every attempt of the council to reduce his budget proposals, and in addition he may veto any item in whole or in part, and he may also submit supplementary budgets covering matters upon which he and the council could not at first agree. Here the idea of the executive budget has been carried to the extreme of limiting even the council's checking powers and of depriving it of all legal power of direction.

Provisions of the Boston type are designed to bring about by law what every one who has studied the problem would consider desirable in practice, namely the abolition of log-rolling and the pork barrel in the enactment of municipal appropriations. To prevent councilmen

from being unduly extravagant in catering to political and ward demands, to inhibit them from padding appropriation bills with unnecessary expenditures, it has been deemed wise to deny them the power to originate or to increase appropriation requests. The important question we have to face here is whether the desirability of the end justifies the means adopted. It might also be questioned whether the means are really effective. Unfortunately we have too little information to reach final conclusions upon these points. We have discussed elsewhere the general policy of depriving the council of control over the administration.[11]

4. The final step in budget making is the enactment of ordinances or resolutions to put it into effect. On the appropriation side the important question is that of the extent to which the budget as adopted should be itemized. Every one seems to agree that if department heads could be trusted completely, it would conduce to efficiency and still more to flexibility in administration to give a lump sum appropriation to each department, on the tacit understanding that the original estimates should be followed as closely as possible. Changes could then be made quickly in cases of emergency, but in the absence of unexpected circumstances the budget estimates as approved would be followed almost to the letter.

Where the council itself exercises direct control of the administration, as in the city manager plan, it would seem to be reasonably safe to use something akin to the lump sum method of making appropriations. On the other hand there is less need for using the lump sum method in this case, since the connection between the legislative and administrative branches is so close that it would be easy to get changes approved even if the amounts in the appropriation bill were fully itemized, or, as it is called, "segregated." On the other hand, where the council does not directly control the administration, and where there is often a conflict of interests and aims between the council and the mayor, as in the strong-mayor plan, the problem is more difficult. As the council views the situation, itemized appropriations are necessary to keep the administration in check. As the mayor sees it, the lump sum system is desirable because it relieves him and his department heads from council interference. A strong argument for the segregated system under any form of government is that it conduces to order and regularity in the making of expenditures, and that it renders more effective the controller's powers of supervision.

[11] See pp. 426–432.

It is the conclusion of many persons that there is a golden mean in the framing of appropriation ordinances. They urge that to make appropriations in such detail that the exact salary or wage of each position is definitely stated, as well as the precise amount to be spent for pencils, for ink, for brooms, and so on, in each department or bureau, is carrying a good idea to an absurd extreme, and that it is sure to result in tying the hands of the administration. It is suggested, therefore, that while the budget estimates may well be itemized to the last degree, the appropriation bill itself should contain less detail. For example, each bureau might have one sum for "supplies," another for "equipment," and so on. The public could then be protected against abuses of power by a code of general ordinances forbidding the department head to create new positions, or to employ anyone who has not passed an appropriate examination, or to make any increases in salary without the council's approval, or to buy any supplies or equipment except through the regular purchasing department, or to do any one of a number of other things which might be contrary to the local public policy. With some such checks as these, and with the civil service commission, the controller, the purchasing agent, and other staff officials to prevent their violation, it has been thought that it would be safe and wise to leave the department head some freedom in the matter of expenditures within the appropriations allowed. It is clear, however, that if the officer is not a permanent professional administrator, but only a local politician temporarily in office, a lump sum appropriation may still be a dangerous thing.

ENFORCING THE BUDGET

The machinery for budget enforcement varies from one city to another, but everywhere it performs an exceedingly important function. Whoever thinks that a sound budget system is primarily a matter of systematic preparation and passage of the appropriation schedules and the tax levy has overlooked the essential work that has to be done every business day of the year in applying the fiscal ordinances as passed. In the course of a year every department may wish to make some expenditures not authorized by the appropriations. Deliberate attempts to do unauthorized things are not uncommon. Official carelessness is also the cause of much difficulty. There are frequent attempts to overdraw accounts. Unless there is someone to enforce its provisions, a budget can easily be made a mockery of.

The controller. The principal officer for budget enforcement is

usually styled the controller or comptroller.[12] His functions relate to both revenues and expenditures, or income and outgo. On the revenue side he must know all the provisions of the charter and the laws which provide for payments of various kinds and amounts to the city, and must also be cognizant of contracts, grants of privileges, concessions, judgments in favor of the city, official bonds, and all other legal rights and relations of the city by virtue of which it may be entitled to receive money or other valuable things. It is his duty to see to it that all sums to which the city is entitled are paid when due, and are properly credited to the appropriate funds. In case payment is not forthcoming, he may refer the matter to the city's legal department for action. The controller's office does not actually receive and take care of the city's money. That duty is performed by the treasurer, of whom we shall speak hereafter. It is the controller's duty, however, to keep a check on the treasurer's accounts to see that all receipts are properly recorded.

The incurment of obligations to be paid out of city funds must also submit to the scrutiny of the controller. At the beginning of each budget year the controller opens an account for each spending department to which the council has made an appropriation. Thus the department of health might have credited to it at the first of the year the following amounts:

Administration	$12,240
Bureau of contagious diseases	54,692
Bureau of school health work	20,354
Anti-tuberculosis work	32,160
And so on.	

In a number of cities each one of these large amounts would be further subdivided, with so much allowed for salaries, another amount for supplies, and so forth. Whether or not each salary and each rate of wages to be paid is specified in the appropriations, however, the controller is chargeable with a knowledge of all the laws, and of ordinances and resolutions enacted by the city in which salary and wage rates may be designated. For example, somewhere in the laws or ordinances he would probably find an item setting the salary of the director of the health department at $6,000, and somewhere else he would be likely

[12] New York Bureau of Municipal Research, *Handbook of Municipal Accounting* (Metz Fund), New York, 1913, *passim;* Watson, "The Controller and the Municipal Charter," *National Municipal Review*, XIII, pp. 32–39 (1924).

to find another which required salaries to be paid in twenty-four equal instalments on the 1st and 16th of each month. If such were the case he would be powerless to approve any salary payment to the said director in advance of the dates fixed or in excess of the amounts so specified. The same rule would apply to the purchase of equipment and supplies by departments and to all other expenditures.

How does the controller make effective his power? This is done by a voucher system. It is the treasurer who keeps the moneys of the city, and who draws the checks or warrants by which the money is paid out. The requirement is commonly made that no payment may be made by the treasurer without the approval in advance of the controller. This approval is given by means of a form called generally a "voucher" or a warrant. Each payroll, each requisition for the purchase of supplies, in fact each request in any form whatever for an obligation to be incurred by the city for which the city will ultimately have to pay out money should go first to the controller's office. There the requisition is checked against the proper item in the budget to see whether there is money appropriated with which to pay it, and it is also examined from the point of view of its legality, its form, and the propriety of making the payment. If the request is in every way a proper and a legal one, and if there is money definitely appropriated for the purpose, the obligation or the payment is approved as a matter of course, the voucher is made out accordingly, and is sent to the treasurer, with copies perhaps to other interested officers. Meanwhile, however, an entry is made in the controller's books showing that the budget item concerned has been "encumbered" to the amount of the payment approved. Later, when the payment involved has actually been made, that fact is also duly recorded, and the budget allowance is reduced accordingly. In this way the departments are prevented from overdrawing their accounts, for when any item of the budget is fully encumbered, no further obligations can be incurred as against that item.

It is clear that in the conduct of the controller's office there is a great deal of old fashioned bookkeeping work to be done. In fact, there is much advanced accounting work to be done there, too, for the controller keeps the controlling set of books for the entire city government. Subsidiary though not unimportant books are kept by the treasurer and to some extent by other officers and departments, but it is usually only the controller's accounts which really tell in full the financial status of the city. He needs, therefore, a staff of account-

ants, bookkeepers, and clerks to aid him to perform his duties, and an adequate annual appropriation for stationery and supplies.

He needs, also, two other things of great importance. The first of these is a position of security and relative independence. It is his function to act as a check upon all of the money-receiving and money-spending departments of the city, to compel them to obey the law in financial matters, and to enforce the budget. It lies within his power to stop much waste and to prevent fraud upon the city. Consequently he should be as free as possible from party or machine control. Some cities endeavor to give him this freedom by making him elective by the voters, but this is not always successful since he must get into politics to be elected, and so usually becomes obligated to some political machine in that way. In some places he is chosen by the council as a check upon the chief executive. In the commission plan he is frequently identical with or appointed by the elected commissioner of finance, and in the city-manager plan he is usually the same as or is appointed by the director of finance. He should, if possible, be chosen strictly on the basis of merit, and should be given an adequate salary and long tenure. Furthermore, his essential powers may well be given to him by the charter and not be subject to changes by the council. He is probably the one municipal officer who, above all others, needs a secure position.[13]

His second great need is to have adequate powers of investigating the conduct of the city's financial business and the handling of its various properties. He should be able to go behind the requests for the payment of claims in order to ascertain the legal and the moral justification therefor. If his power is to be complete he needs the authority to subpoena witnesses and to compel them to give testimony on oath. Generally speaking, his power seems not to have been extended to the full in this direction. In Boston the so-called Finance commission really performs the inquisitorial functions of a controller, and in New York this work is done in large part by a separate officer

[13] The question of the position of the controller, who is the city's chief financial officer, is one of some difficulty. Where a city has a responsible chief executive such as a city manager, there can be little doubt that the controller should be appointed and controlled by the executive, for only in this way can responsibility be fully centralized and the chief executive be given full control of and complete information about the administration. The situation is distinctly different, however, in cities which do not have responsible chief executives. In many small cities the problem does not arise since there is no controller. In such places the council itself approves all obligations against and payments from the treasury.

called the Commissioner of accounts. Elsewhere the power of inquisition seems to be left largely to the council, or to prosecuting attorneys, grand juries, and the courts. Unfortunately a court or a grand jury can act as a rule only after a wrong has been committed. The controller could act in advance of payment, and might succeed in preventing frauds if he had the power mentioned.

The treasurer. The ancient office of chamberlain or treasurer of the city has become in the course of time primarily a ministerial one. That is to say, the treasurer has practically no power to make important decisions. His functions are those of receiving all funds payable to the city, whether they be from taxes or fees or fines or judgments or from sales of bonds or property, of making appropriate records of all moneys taken in, of safe-keeping them and of depositing them with banks in accordance with the law, and of paying them out upon the authority given him by the vouchers issued by the controller. In most of these affairs he has no power of discretion whatever, and he is nearly everywhere under a heavy bond which protects the city against possible loss through his carelessness or peculation. In some places he does not even collect the principal taxes, that function being performed by a county officer. His duty in the enforcement of the budget is essentially that of refusing to pay out money except upon the vouchers of the controller. This is so much a matter of routine that one frequently hears suggestions that the office of treasurer be abolished. Some small cities already have practically turned the functions of the treasurer over to some local bank which receives and safe-keeps the taxes and other revenues, pays out money upon the warrants or vouchers of the controller or of the council itself where there is no controller, and meanwhile pays interest on the city's deposits and renders monthly statements of the account.

The purchasing agent. As we have said before, every large city is compelled to buy annually hundreds of thousands and perhaps millions of dollars worth of goods of all kinds needed for carrying on its administration and its public works. Every segregated municipal budget will therefore be found to include numerous items requesting sums of money for the purchase of such necessary goods. It becomes, therefore, a matter of sound business management and also of proper budget enforcement to provide a system of purchasing supplies which will procure for the city the most and the best possible goods for its money. Many of the larger cities have found it wise to establish for this purpose central purchasing bureaus, headed by trained and

responsible purchasing agents, to buy supplies and materials for all departments. The advantages in this system, already adverted to, are that the city thus gets the benefits of skillful buying, of uniform buying, and of buying in large quantities. A few cities have added to these advantages by providing central storehouses, so that certain staple and not especially perishable supplies can be kept on hand at all times and the public business need never be held back for lack of the required goods.

The work of a purchasing department is usually limited by law or ordinance to something less than the entire scope of the city's purchasing problem. Almost everywhere, however, it does buy, and buy successfully, the following types of goods:

(1) Current supplies, perishables, etc., of a staple character, which are consumed by a single use, such as fuel, foods, stationery and printed matter, soaps, medicines, etc.

(2) Materials which are to go into repairs or permanent improvements, such as lumber, cement, brick, iron pipe, wire, paint, etc.

(3) Standardized equipment, (a) for offices, such as desks, chairs, filing cases, typewriters, adding machines, etc., (b) for public works, such as automobiles, trucks, fire department equipment, machinery, etc., and (c) for buildings, such as furnaces and boilers, elevators, ventilating devices, etc.

(4) A purchasing department may also be permitted to buy for the city such ordinary public services as telephone, gas, electricity, and local transportation for city employees. In practically all such cases, however, the rates are fixed by outside public authority, there is no competition among producers, and there is little that the purchasing agent alone can do to save the city money.

Aside from these four general classes of purchases there are at least three others with which the purchasing agent has little or nothing to do, and which perhaps his bureau could not handle so successfully.

(5) There are a number of specialties such as scientific apparatus, certain types of hospital equipment, perhaps some textbooks, and other things not standardized or common, upon which the special judgment of the expert in the particular field would probably be better than that of the purchasing agent. In other words the selection of the thing to be purchased, but not the actual buying, had probably best be left in such a case to the judgment of the particular specialist concerned.

(6) The purchasing department is very rarely given power to buy for the city government the land and the buildings required for its

purposes. This is an extensive field. It is left to the council and the several boards, which use their own judgment in selecting advisers, and are sometimes suspected of playing "real estate politics" and even of earning some "honest graft."

(7) Finally there is the whole field of contract work, which is also reserved very generally to the council and the several boards. Each year a large city will probably erect some buildings, remodel others, lay water and sewer mains in a number of streets, construct bridges, lay some miles of pavement, and do other important and expensive things by the so-called contract method. The contracts in these several cases may usually be let only after secret bidding on standard specifications, and must generally be let to the lowest responsible bidder. In such cases the purchasing agent either has nothing to do at all, or else has only the most perfunctory duties.

But what has all this to do with the enforcement of the budget? It is one of the main purposes of a budget system to keep the cost of government as low as possible. The annual budget fixes certain *maximum* amounts which may be expended for various purposes during the year, but generally says nothing about minimum sums. Since the council in passing the budget has approved certain expenditures it is to be presumed that the departments will accomplish the work thus authorized. But the spirit of the budget system, if not the letter, requires that all the work be done as cheaply as possible consistently with good results. If $400 has been allowed for the purchase of brooms upon the explanation made that 400 brooms usually selling at $1.00 apiece are needed, a favorable turn of the market reducing the price of these brooms to 75 cents apiece should be taken advantage of not to buy more brooms than are needed and thus to use up the whole $400 allowed, but to buy the number needed at the lower price and to leave the money thus saved in the city treasury. In the same way it is desirable to make savings if possible, on every item in the budget, whether it be for the purchase of supplies or of materials or of equipment or of land.

A well-planned purchasing organization is, therefore, one of the chief buttresses of a budget system. Where supplies must all be requisitioned from a central department, that department can come to know the market and to buy goods with shrewdness. A uniform system of ordering can be used. Each requisition or request for supplies can be sent first to the controller for his approval. The purchasing agent's records can be made to show the proportionate use of different

types of materials and supplies by different departments. This provides a check upon expenditures to some extent, and gives also the means of acquiring uniform and comparable information relative to departmental expenditures. In addition to the saving of money and the reduction of actual expenditures below the budget appropriations, there is an advantage in having centralized purchasing, inasmuch as the budget officer can draw upon the accumulated experience of the purchasing agent in planning expenditures for subsequent years. These are some of the possible contributions of the purchasing department to the enforcement of the budget idea.

The civil service commission has been discussed elsewhere.[14] While it has little to say about salaries and wages, it should have a great deal to say about the quality and proficiency of the employees of the city. It is commonly provided that payrolls shall go to the civil service commission for its approval as well as to the controller for his, and the commission is empowered to stop the payment of a salary or a wage to any person who has not been legally selected to fill the position. In this way it is able at times to prevent some misuse of the public funds. But who is to determine whether a public servant has actually put in as many days or hours of service as the payroll indicates? And who has the power to decide whether his services are really of value to the public? Such facts are exceedingly hard to come at unless the civil service commission or some other authority has broad personnel functions.

The budget bureau itself, if it has powers of continuous investigation of the city's business practices, may do much to help in the enforcement of the current budget, and still more to aid in preparing the ground for better budget making in the future. It is doubtful whether it is worth while to have several distinct bodies with full investigatorial functions. If the budget bureau is in the financial department, as is commonly the case, it can function in the closest harmony with the controller's office. It may, in fact, be under his charge.

The mayor or manager, and the council. The chief executive officer and the council also have important functions in carrying out the budget. The chief executive, being responsible for the entire administration, should see to it that every department and bureau head is imbued with the spirit of the budget system. Such a system is not designed to hamper administration but to promote it by giving it plan and orderliness and a means of reducing waste. Incompetency

[14] See pp. 458–462.

and extravagance cannot help and may greatly harm the departments.

In spite of all efforts, however, there will come times when the current budget will be found inadequate to meet an existing situation. Prices go up as well as down. Fires and unforeseen contingencies upset the plans of the most carefully managed departments. It becomes necessary then, for one reason or another, to find more money for some projects than was originally calculated to be sufficient. On such occasions the chief administrator must appear before or send word to the council to apprise it of the new situation and to propose a solution. He may ask for an appropriation from funds previously set aside to cover emergencies, or he may ask the council to make a temporary loan, or, more commonly, he may request it to transfer from one item to another in the same department, or even from one fund or department to another, a sum needed to carry on the work which is handicapped. In some cases the chief executive himself has the power to authorize minor transfers of funds, or transfers within a single department, but it is usually only the council which can approve important transactions of this kind, or which can authorize temporary loans. If it finds an undue number of requests coming in for these purposes it may find grounds for sharp criticism of either the budget bureau or the entire administration.

The council has also the power as a rule to provide for an annual or even more frequent *audit* of all the city's books. The controller himself keeps a continuous check upon the accounts of the treasurer and other officers, but at times it is desirable to have his books and records inspected as well. In some states there is a state officer who does this work; elsewhere a private firm of accountants may be asked to make the audit. Wholly unsatisfactory for large cities is the old fashioned system of having a committee of the council do the work. Such an audit needs to be made by persons of skill and training if it is to be of value. While it deals only with past transactions it may result in pointing out errors in accounting methods, illegal expenditures erroneously approved, and other defects in system or in practice. Furthermore, the knowledge that accounts will be audited from time to time has a wholesome effect on all financial and accounting officers.

A MUNICIPAL EXPENDITURE POLICY

In conclusion, what is a sound expenditure policy for a city to pursue? In the first place every city should have a definite policy, and

not permit itself to be hurried into making expenditures here and there in so-called emergencies, only to find later that an unwise burden has been assumed.

This requires, in the second place, that there be careful planning not only each year in the passage of the city's budget but also over a period of years. No new expenditure or activity should be undertaken until a careful investigation has revealed the available facts concerning it and has established beyond a doubt the usefulness of the new work. A carefully formulated social policy is what is needed. Such a policy comes to expression in the expenditures made, but of course the policy itself takes into account such factors not measurable in money as the health, the education, the morals, and the general improvement and beautification of the lives of the whole people.

Thirdly, every effort should be made to get full value from every dollar expended. This does not mean buying the cheapest materials, erecting flimsy buildings, or underpaying public employees. It means, on the contrary, first setting a standard of what is needed and desired, and then acquiring this predetermined quality of goods and services on the best terms possible. It means elimination of waste, extravagance, and corruption.

Finally, the city should be scrupulously honorable in meeting all its obligations, in paying for current expenses from current revenue, in retiring bonds as they fall due, and in staying within all legal limitations as to the purposes and the amount of its expenditures.[15]

REFERENCES

The data concerning *municipal expenditures* in the United States have been published somewhat irregularly by the Bureau of the Census in volumes entitled *Financial Statistics of Cities*, of which the last is that for 1922

[15] We cannot leave the general subject of municipal expenditures and budgets without at least mentioning the important but more or less technical subjects of municipal accounting and fiscal administration. Limitations of space and purpose, and the specialized nature of both subjects, prevent us from discussing these matters in the text. *A Syllabus of Municipal Administration* by Dr. Lent D. Upson outlines these studies and lists some valuable works dealing therewith (pp. 20–22). The published surveys of various cities by the New York Bureau of Municipal Research go fully into these matters. In the files of other bureaus of municipal research could no doubt be found many detailed studies of local accounting and business practices. The Rochester bureau published such a study in 1923 (*Report of a Study of the Financial Condition and Practices of the City of Rochester, N. Y.*). The books on municipal accounting by Cleveland, Eggleston, Oakey, and others mentioned by Dr. Upson in his syllabus deserve special mention.

but the best is probably that of 1919. No one has yet attempted an exhaustive analysis of the figures, but there are worth while discussions in Munro, *Municipal Government and Administration*, vol. II, ch. XLIV, and in *The Annals* of the American Academy of Political and Social Science, May, 1924, vol. CXIII. More general discussions of public expenditures will be found in the books on public finance of which the most recent (Jensen, *Problems of Public Finance*, New York, 1924, and Lutz, *Public Finance*, New York, 1924) contain up-to-date information. For particular cities the data can be found in greater detail in the annual reports of auditors and controllers, and also in the publications of local bureaus of municipal research.

Budget-making problems have been so much written about in recent years that one cannot make a short list of titles without leaving out others perhaps of equal importance. As related to the problems of American cities we mention Buck, *Budget Making*, New York, 1921, which deals with forms and procedure, and also his new work, *Municipal Budgets and Budget Making*, New York, 1925; Cleveland, *Municipal Administration and Accounting*, New York, 1909; Lambie, *The Municipal Budget*, Minneapolis, 1924; various numbers of *Municipal Research*, published by the New York Bureau of Municipal Research; several articles in the May, 1924, number of *The Annals*, etc., referred to above and also the entire number of *The Annals* for November, 1915, entitled "Public Budgets," (vol. LXII); and such more general works on budgets as Cleveland and Buck, *The Budget and Responsible Government*, New York, 1920, and Fitzpatrick, *Budget Making in a Democracy*, New York, 1918. A number of recent city charters contain good to excellent provisions relative to budget forms and procedure, and in addition many cities now publish either their budget estimates or their adopted budgets or both. In Maxey, *An Outline of Municipal Government*, ch. 16, will be found a good brief discussion of the subject. See also his *Readings in Municipal Government*, ch. 16.

CHAPTER XXI

MUNICIPAL REVENUES

THE CLASSIFICATION OF REVENUES

The early American city did not rely primarily upon taxation for its revenues. In the city of Albany, as we have seen, the corporation had a whole series of trading privileges, monopolies, estates in land, and business enterprises from which its income was to be derived. The city of New York was in early days a large-scale landowner, deriving some rents from what it held and increasing its revenues from time to time by sales. Still more valuable as sources of revenue were its ferries, docks, and markets. Licenses brought in a small but steady income, and voluntary contributions from citizens were also at times resorted to. In terms of money the total revenues were small, being under 600 pounds per annum on the average up to 1730, and rising in 1767 to 3,333 pounds. Many public works and services were carried out by the citizens under obligation to serve, so that the money expenditures or revenues do not indicate fully the extent of municipal functions. Even before 1700, however, taxation was at times necessary to piece out the petty revenues from other sources, though it remained relatively unimportant down to the Revolution. The close corporation of Philadelphia, as we have seen, was unable at any time to procure the taxing power. The power was conferred instead upon certain local boards. The town of Baltimore relied largely upon miscellaneous revenues and the voluntary efforts of citizens to obtain subscriptions of money for special purposes, while on several occasions it even resorted to lotteries. These are but illustrations of the municipal revenue situation in the colonial municipalities.[1]

As we have said before, the English and colonial concept of municipal corporations in the seventeenth and eighteenth centuries was

[1] On municipal finances in colonial days, see Fairlie, *Essays in Municipal Administration*, pp. 88–94; Peterson, *New York as an Eighteenth Century Municipality, Prior to 1731*, pp. 36–38; Edwards, *New York as an Eighteenth Century Municipality, 1731–1776*, pp. 190–205; Durand, *The Finances of New York City*, pp. 17–25; Allison and Penrose, *Philadelphia, 1681–1887*, pp. 22–29; Hollander, *The Financial History of Baltimore*, pp. 5–30, *passim*.

quite unlike that which we have to-day. We now look upon cities primarily as arms of the government, agents of the state, which may exercise locally the powers of a state. We do not think of them generally as owning property and engaging in business or industry for a profit. If any American city seriously attempted to run its water works or other facility for a profit in order to relieve taxpayers of some of their burdens, its officers would quickly hear strong protests from the citizens. But if cities are to be denied the right to engage in profitable business, and if they are required to supply numerous services like police protection and education without specific charge, then they must reach their hands into the streams of private income in order to obtain the revenues needed to support their various activities. This change in public attitude, combined with the tremendous and rapid growth in urban populations, the rise of new public needs, and the depreciation in the purchasing power of the currency, has compelled American cities to lean more and more heavily upon taxation as a source of support. To-day taxation is far and away the most important source of municipal revenue. Cities of over 30,000 population derive to-day over 70 per cent of all their revenues from taxes of different kinds, exclusive of special assessments.

There are various ways of classifying public revenues. For practical purposes we may use the classification of the United States Bureau of the census, which is as follows: [2]

1. *Taxes*, subdivided as follows:
   (a) General property taxes.
   (b) Special taxes, such as those on bank stocks, incomes, inheritances, mortgages, corporations, etc.
   (c) Poll taxes, including all per capita taxes.
   (d) Business taxes, whether in proportion to the volume of the business, or by reason of the nature of the business, etc.
   (e) Non-business licenses, such as those for automobiles, dogs, building permits, marriage licenses, etc.
2. *Special assessments.*
3. *Fines, forfeits, and escheats.*
4. *Subventions or grants* from the state and other units.
5. *Donations and gifts.*
6. *Pension assessments* upon policemen, firemen, etc.
7. *Highway privileges*, or payments by individuals and corporations for special privileges in the streets and public places.

[2] *Financial Statistics of Cities*, 1922, pp. 18–25.

8. *Rents* of investment properties owned by the city.
9. *Interest* on municipal funds.
10. *Earnings of general departments* for services actually performed, goods delivered, etc., such as the sale of publications, copying of documents, etc.
11. *Earnings of public service enterprises*, such as water, gas, electricity, etc.

Moneys borrowed for municipal purposes are not classed as "revenue receipts" by the census bureau, because loans must be paid back ultimately out of real revenues.

In the order of their importance in 1922, these different sources yielded to cities of over 30,000 inhabitants the following amounts and percentages of revenue: [3]

REVENUE RECEIPTS, ALL CITIES OVER 30,000, 1922

	Totals	*Per capita*	*Per cent. distribution*
1. (1a above) General prop. tax	$1,337,784,348	$34.54	66.7
2. (11 above) Public service ent.	184,504,606	4.76	9.2
3. (4, 5, 6 above) Subventions, grants, donations, pensions	119,105,540	3.07	5.9
4. (2 above) Special assessments	103,134,949	2.66	5.1
5. (7, 8, 9 above) Highway privileges, rents, interest	94,150,768	2.43	4.7
6. (1d, e above) Business and non-business licenses	58,077,468	1.50	2.9
7. (10 above) Earnings gen. depts.	51,970,085	1.34	2.6
8. (1b above) Special taxes	41,089,846	1.06	2.0
9. (3 above) Fines, forfeits, etc.	13,035,243	0.34	0.6
10. (1c above) Poll taxes	4,155,943	0.11	0.2
	$2,007,008,796	$51.81	99.9

It will be noted that items 1, 6, 8, and 10 are listed in the classification above as "taxes." Altogether these taxes brought in $1,441,107,605, or $37.21 per capita, and 71.8 per cent of the total revenue.

LIMITATIONS ON MUNICIPAL TAXING POWERS

The power of taxation is the power of the state to compel all persons under its jurisdiction to contribute to the public treasury for public

[3] *Financial Statistics of Cities*, 1922, pp. 128–129, 188–189.

purposes some part of their wealth, income, or services, according to some known rule of apportionment. Under our system of government this power is inherent in the commonwealths, and has been conferred by the United States constitution upon the national government as well. It is not inherent in cities or other local units. All cities have the power to some extent, but they possess it generally as a gift from the state which may be withdrawn at any time.

A city has, therefore, no power of taxation except such as has been clearly conferred upon it by the state, and the exercise of whatever taxing power has been so granted is subject to all the limitations to be found in the state constitution, the state statutes, and the city charter. Such limitations are of many kinds, but they fall in general under the following heads:

1. Limitations as to the purposes for which taxes may be levied.
2. Limitations as to the subjects which may be taxed.
3. Limitations as to the methods of taxation.
4. Limitations as to the total amount or rate of taxation per capita or per $1,000 of assessed valuation, or as to the amount for each purpose.

We need to pay some attention to these restrictions.

1. Limitations as to purpose. The state legislatures generally have almost complete power over the purposes for which cities may raise and spend money. To this general rule there are only a few important exceptions. (a) The legislature itself may not authorize taxation for non-public purposes. This is a rule of constitutional law which has been enforced by the courts in a number of cases previously referred to.[4] (b) In a few cases the state constitutions themselves practically confer the power of taxation for certain purposes upon the local units, and in a number of others they deny the power to tax for other purposes. In either case there is a limitation of the legislature's power in the premises. (c) In several of the constitutional provisions conferring upon cities the power to make and to change their own charters there seems to be granted a certain amount of taxing power. The decisions show, however, some doubt and confusion upon this point, and in practice the "home rule" cities seem to have little more taxing power absolutely guaranteed them than is the case with other cities.[5]

Since cities have no inherent taxing power, it is necessary to go to

[4] See pp. 405–411.

[5] McBain, *The Law and the Practice of Municipal Home Rule*, See Index.

the state constitutions and laws, and to the city charters, to find out what taxing powers have in fact been conferred upon them. Even these laws and charters, however, are subject to interpretation by the courts. In the numerous judicial decisions of the several state courts we find, therefore, another body of law upon the subject. At an early date when cities had no general power of taxation, it was customary for the legislature to give the power piecemeal by saying that not more than a certain sum or a fixed mill rate might be levied for street improvements, another sum for police protection, and so on for other definite purposes. These detailed restrictions as to both amount and purpose are still to be found in many laws and charters, but there are also usually some powers conferred upon cities to levy taxes for general city purposes. Under these general clauses the question frequently goes to the courts whether a certain expenditure of tax revenues is for a "municipal purpose," and there have been a number of decisions denying to cities the right to raise and spend money for military expenses, for entertaining visitors, for sending aldermen on trips for their general education, for advertising the commercial opportunities offered by the city, or for providing certain conveniences not considered strictly "public."[6] A municipal purpose is simply a local public purpose.

2. **Limitations as to the subjects of taxation.** Every state has its own policy in the matter of taxation. All the states impose taxes either for state or for local purposes upon property in general or by classes, some of them authorize poll taxes, some have provisions for special taxes on corporations or on businesses, many levy taxes upon inheritances, and some tax incomes. These are but illustrations of the different subjects upon which taxes are being imposed. It is not possible to state in a word what powers the states have conferred upon cities to tax these different subjects, but we note the general tendency for the states to reserve for themselves some of the more important subjects. In Minnesota, for example, the state collects and keeps for itself all taxes upon railroads, express companies, telephone and telegraph companies, and certain other corporations, and also upon automobiles.[7] The cities are put to a considerable expense to protect

[6] McBain, *American City Progress and the Law*, pp. 203–250, *passim*, cites a number of the cases.

[7] *Biennial report*, Minnesota state tax commission, 1920, pp. 9–19. In the case of automobiles, cities may levy a local "wheelage tax" not exceeding one-fifth of the state tax, but they may not tax automobiles as personal property.

and to regulate these companies and conveniences, but they may not tax them for local purposes. In consequence they must tax more heavily the property of local industries, commercial houses, retailers, and home-owners.

The tendency here noted is what is known as the separation of the sources of state and local revenues. It has gone far in some states, but elsewhere it has made little progress. An almost inevitable result of such a separation is to permit the state, which has final decision in the matter, to take for itself those sources from which revenue is most easily collected and with the smallest amount of complaint, and to compel cities and other local units to rely more extensively upon that which always seems to arouse the most opposition, namely the property tax. This may be one way of checking local expenditures, but at the same time it makes easy the expansion of state functions and expenditures, and thus promotes centralization. Another disadvantage in the separation of sources is the possibility that it will leave the local units without adequate sources of revenue. As a rule it is better for a government to have a variety of sources of revenue, and not to rely upon just one or a few. Furthermore, as we have noted above, another result may be to compel local property owners to contribute to local governments not only enough taxes to provide protection and improvements for themselves, but also enough additional to provide these for corporations and businesses which contribute little or nothing to the local treasury. The resultant injustice may be very keenly felt at times.[8] Finally there is objection to complete separation because it causes the state to lose to some extent its interest in and its responsibility for the taxes which are reserved to the local units. The state and the local governments are all part of one system, and need to be articulated instead of being separated.

3. **Limitations as to the methods of taxation.** Of a piece with the limitations upon the subjects of taxation are those upon the methods to be followed. Especially in the field of property taxes the laws are full and specific as to methods of assessment, review, and certification, as to the exemptions to be granted, and as to other details. There

[8] Several small cities in Minnesota have more than half in value of all local property owned by railroads and used for railroad purposes, such as round houses, docks, etc. This property the cities could not tax. At the same time they had to provide schools and other facilities for hundreds of railroad workers and their families. The taxes upon other property became almost confiscatory, and the legislature was finally compelled to pass remedial legislation. See *Minnesota Municipalities*, vol. IX, pp. 131–133 (1924).

has been a growing movement, also, to control local taxing authorities not only by legislation but by setting up state administrative authorities such as state tax commissions to supervise their work. One of the chief original purposes of such bodies was to bring about uniformity of assessment throughout the state so as to make it possible to levy statewide taxes with justice to all. The powers of tax commissions now go far beyond this point in a number of states. They instruct and advise local tax officials on many points, and in some states they even have the power to remove local assessors for gross neglect of duty. Almost everywhere their work has resulted in a betterment of taxing and assessments methods. They have in fact adequately demonstrated the value of state supervision over one important municipal staff function. Large cities as well as small have received benefits. The question may well arise whether the powers of state tax commissions should not be extended to permit them to authorize variations in assessment methods suited to peculiar local conditions.

4. **Limitations upon the amount of taxes.** We come finally to that group of restrictions to which city officials most strenuously object, the limits set by law to the amount of taxes that may be raised. These limits appear in various forms. In many states they are embodied in the state constitution, elsewhere they are to be found in general statutes, and in some places they are incorporated into city charters. It is interesting to note that they appear even in a number of home rule charters, which shows that it is not only legislators and constitution makers but also the local voters and taxpayers who wish to put a check upon local taxation. In some instances these restrictions are upon a per capita basis, and are to the effect that not more than $25 or $30, or some such amount, may be raised in taxes per capita per year. This type of limitation takes no account of fluctuations in prices and wages, and is therefore quite unreasonable. Another difficulty in this form of limitation is that of estimating the population in the years between censuses. If the increase in the number of inhabitants is overestimated the city government may raise the taxes very high. If the next census then reveals a much smaller number of residents in the city, a marked reduction in taxes may be necessary. Another form of limitation is that which provides that the expenditures or the taxes for any year shall not exceed those of the preceding year by more than a fixed small percentage.

The most common form of restriction is that based upon the valuation of the local taxable property. It is usually expressed as so many

mills on the dollar, or dollars on the thousand dollars of valuation.[9] The limitation may be a general one, covering all local purposes, or there may be a number of express limits, such as one mill for parks, one-half mill for libraries, and so on.[10] It is common practice, however, in order to protect the credit of the city, to exclude from the limit the amount needed to pay the interest on loans. The most famous of these tax limitation laws is that which has run its course in Ohio since 1911.[11] In some states and cities the limitations have not been so severely restrictive as to cause much difficulty, or else we must assume that they have not been thoroughly enforced. The Ohio law, however, not only established a low tax limit but also provided for a series of county budget commissions to see to its enforcement. While the law was intended to operate upon all local units, a combination of factors served to give counties and school districts an advantage over cities with the result that it was the latter which suffered almost the entire effect of the law.

We cannot stop to analyze fully the results of tax limitation in Ohio or elsewhere. Wherever such limits have been low enough to make a difference they have obviously worked to some extent to keep down tax levies. On the other hand where they were higher than they needed to be they may also have given municipal officials the feeling that they were entitled to raise taxes to the limit allowed. At least there seems to be a strong tendency in the actual tax levies to approximate the maximums allowed.[12] In any case we know that expenditures have

[9] One mill is one-tenth of a cent. A tax of ten mills to the dollar is the same as one cent on the dollar, or $10 on $1,000. The "assessed valuation," upon which tax rates and tax limits are based, is frequently less than the "full and true" value of the property.

[10] In the city of Minneapolis there are twenty-seven different local tax levies made by six different bodies, but all subject to the approval of the Board of estimate and taxation and all finally consolidated into one tax bill for each taxpayer. There is a legal maximum fixed either by the charter or by statute for almost every one of these twenty-seven levies. See *Budget Facts and Financial Statistics of the City of Minneapolis for 1922*, pp. 7, 13.

[11] See Atkinson, *The Effects of Tax Limitation upon Local Finance in Ohio, 1911 to 1922*, Cleveland, 1923; Upson (ed.) *The Government of Cincinnati and Hamilton County*, Cincinnati, 1924, pp. 57–137, *passim*, and various articles in the *National Municipal Review*.

[12] This tendency may be due to the fact that the limits were so fixed as to allow only a small margin over current expenditures when prices were low. When prices rose faster than assessed valuations it was inevitable that the taxes should soon reach the maximum.

not been kept down to the same extent as have the taxes. City officials have found ways, devious and otherwise, of getting the revenue they think they require. One of the most obvious ways is that of raising the property assessment as high as possible. Other practices have been still more unsound financially. In some cases the city's officers have diverted to current expense moneys borrowed on long term bonds ostensibly for the purpose of making some durable improvements. In other cases they have made short time loans which they have been compelled to increase in amount from year to year until the sums due became truly formidable and the interest thereon itself became a considerable drain on current revenues. To some extent also the floating debts have been allowed to pile up by postponing the payment of bills and judgments from one year to the next. Even the sinking funds have not gone untouched when the officials felt that they simply must find more money for current expenses. The inevitable result of some of these practices was that the cities had to fund debts incurred for current expenses and to "refund" others.[13] In this way current expenses, instead of being paid out of revenues, were transmuted into long term debts to be paid by taxpayers in the future. The naturally close relationship between borrowing and current revenue in these cases should not be overlooked. It is impossible to put a full stop to increased expenditures unless both the borrowing power and the taxing power are limited at the same time.

The immediate result of tax limitation which actually restricts is, then, to compel cities to resort to various financial malpractices in order to get the needed funds. Finally the legislature sees the unreasonableness of its policy and begins to let down the bars once more. It learns that cities should not be forbidden to pay current expenses out of revenues, but should be compelled to do so, until the local taxpayers themselves take action to put a stop to local extravagance.

As in the case of debt limits, to be discussed later, there are strong objections in principle to fixed tax limits. There is scarcely any scientific basis for determining the rate to be set. Shall it be one per cent or one and a half? The fixed rate makes no allowance, moreover, for fluctuations in the cost of service and supplies and in the public need for services, and hence may cause either a serious injustice to city

[13] "Refunding" in public finance means the borrowing of more money on long term bonds to pay off bonds which have fallen due when there is no cash on hand to pay them off. Thus the debt is not repaid but continued in existence in a new form.

employees or a crippling of the services for lack of funds. Of course if it is not made rigid it will not be fully effective because there will be pressures brought to bear to permit this and that exception. A final objection to tax limits is that they give the taxpayer a false sense of security and lead him to forget his duty to be an active, studious citizen. The tax limit is an attempt to achieve a desirable result in the easiest way possible which in fact can be accomplished only by constant hard work.

Far more flexible, but open to other objections, is the Indiana plan of limiting local tax levies.[14] Every city and other tax-levying district in this state must prepare an annual budget and upon the basis thereof must calculate a tax rate sufficient to cover the expenditures proposed. The budget and the tax levy must then be certified to the State board of tax commissioners which may, upon the petition of any ten aggrieved taxpayers, in its discretion, veto any increase in the tax levy over the rates of the preceding year. If this power is used by the board only in emergencies when the governing body of some city has raised taxes sharply without apparent cause, it will undoubtedly do some good. If it is used frequently, however, its total effect will not be so desirable. No small group of men not fully cognizant of every local situation could possibly act wisely on hundreds of budgets in the short time between the local passage of the budget and the time when such budget should take effect. Of course the board can keep down taxes by simply making a hasty and arbitrary decision to that effect, but in the circumstances everyone must be aware that the decision is not based on full knowledge of the facts. By its decisions, furthermore, the board may overrule local authorities in matters of local policy to which the latter may have given long study. In the case of the larger cities certainly there is little justification for this. All cities make mistakes, it is true, but it is within the power of the local electorate to correct them, and it should bear the responsibility for them. To divide this responsibility is unfortunate. If the taxpayers and property owners find that there is a special providence established for them in the form of some state board, they can and probably in many cases will neglect the duties of local citizenship. Instead of trying to improve the organization and the personnel and the business methods of the local government, they can simply appeal once each year to a state board which is not responsible to the locality to save

[14] *Laws of Indiana*, 1921, chap. 222; Indiana State board of tax commissioners, *Reports*, 1921, 1922, in *Indiana Year Book*, same years.

them from higher taxes. It will not do to say that they are so few in number that they have no weight in local politics, for everyone is aware that the power and the influence of the well-to-do is almost everywhere out of all proportion to their numbers.

How shall, then, the taxes be kept down? That is the practical question asked by the taxpayer. No categorical answer can be given. Tax limitation is one way of doing it, but it is so arbitrary in most of its present forms and has such unfortunate reactions that it is questionable whether the good results are really greater than the bad. Other lines of approach to the problem may be indicated briefly as follows:

1. In the long run the important problem is that of keeping down expenditures. If the money has once been spent, sooner or later the bill will have to paid, and probably by the taxpayers. One of the most important ways of reducing expenditures is by the promotion of efficiency in the administration. This involves the wiping out as far as possible of the spoils system and the establishment of the merit system, the putting of experts instead of amateurs and politicians into all important offices and employments, the purchasing of supplies through a central office by men with training for the work, the letting of contracts without consideration of person or party, the depositing of municipal funds where they will, with safety, draw the most interest, the improving of the city's accounting and business practices, and the installing and enforcing of a sound budget system. Taxpayers' associations of all kinds, aided by municipal research bureaus staffed by capable men, can take a leading part in the promotion and the effectuation of these reforms.

2. Perhaps some economies can be effected by the actual lopping off of some municipal functions. No one would, perhaps, recommend the wiping out of a whole service such as that of the fire or health department, but there may be here and there in departments some expensive bureaus whose services to the public are luxuries rather than necessities. If such exist the taxpayers might well take the initiative in having them eliminated,—but it is always interesting to learn how hard it is to find any "frills" among the municipal services. What one man considers wholly useless appears to another to be among the most indispensable of functions.

3. It is sometimes suggested that the municipal employees are being overpaid, and that they should have their pay reduced. If the payroll constitutes 50 per cent of the city's expenses, then a 10 per cent cut in wages and salaries would reduce total expenditures by

5 per cent, and a 20 per cent cut would lower them by 10 per cent. Of course every city has its own problem in this respect, but it is doubtful whether many cities are on the whole overpaying their employees at the present time. Careful study of the question post by post might suggest some reasonable reductions in individual cases, but it is likely that many cities would find as many underpaid as overpaid employees.[15]

4. The taxpayer's grievance when analyzed is found to be essentially a personal one. His own tax bill is too large for him to pay conveniently. This suggests the thought that what is needed just as much as efficiency and economy in expenditures is a readjustment of the tax burden with a view to making it fairer to all. It may well be that some persons are paying too much, others less than their fair share, and that some are escaping direct taxation entirely. This brings us more directly to the subject of taxation in cities.

THE GENERAL PROPERTY TAX IN CITIES

We have already pointed out that in recent years fully two-thirds of the annual revenue receipts of the larger American cities have come from the so-called general property tax. Other taxes have yielded all told only about one-tenth as much, while receipts, amounting to between 25 and 30 per cent of the total, have been drawn from sources other than taxation. By "the taxpayer" we mean, then, for all practical purposes, the man who pays a general property tax. He is the man whose tax burden has been growing steadily in recent years, and who has so vigorously expressed his displeasure with the cost of government. Let us examine the tax which bears down upon him and endeavor to ascertain how much of injustice there is behind his complaint and what can be done, if necessary, to make the taxing system more just.

The general property tax may be defined as a personal tax levied upon the basis of the value of each person's property considered as a whole and levied at a flat rate for all persons in each taxing district. The attempt is made under this tax to arrive at any person's tax-paying ability by adding up the values in dollars of all his different properties (properties in land, in buildings, in furniture, in jewelry, in stocks and bonds, in automobiles, etc.) One man's property assessment will come to $20,000, another's to $5,000, and so on. Since the rate of the tax is the same for all within the district, the $20,000 man will pay just four times as much tax as the $5,000 man. The total

[15] See pp. 472–477, above.

amount of all the assessments within the district gives the total assessed value. This is the basis on which the tax is figured each year. The total amount of money which must be raised by taxation determines then the rate which shall be applied. Thus if the total valuation within the city is $200,000,000, and the city needs $4,000,000 over and above its miscellaneous revenues, the tax rate will be 2 per cent or 20 mills.

Nearly all the states have some special taxes, statewide or local, and all states authorize some exemptions from the general property tax. Thus the definition given above is merely one to which the different systems tend to conform. Disregarding these variations, we may say that both in principle and in practice it is possible to find defects in the general property tax. At any one time the different forms of property do not have, dollar for dollar of value, an equal ability to pay taxes. Wearing apparel, furniture, houses, and railroad bonds do not yield income to their owners in the same degree. Furthermore the possession of property on assessment day once a year is not the only test of tax-paying ability if it is a test at all. Some men with large incomes have substantially no taxable property. Moreover, one man owns his house unmortgaged and pays one tax upon it, while another owns a house upon which there is a heavy mortgage, both of which, *i. e.*, house and mortgage, are property and should pay taxes under the theory of the general property tax. Practically this is a case of double taxation, and if the property tax were strictly enforced there would be many other cases of the same kind. In cities, where there are the largest accumulations of wealth in the forms of stocks, bonds, mortgages, bank deposits, and jewelry, and the greatest numbers of persons who own no large amounts of taxable property, the theory of the general property tax is most clearly defective.

For many years the leading American students of taxation have recognized the defects in the theory of the general property tax under modern industrial conditions.[16] Nevertheless it has been saved from destruction by a number of distinct causes among which have been (a) the natural conservatism of the people, (b) the fact that the tax still conforms fairly well to the economic conditions prevailing in many rural districts, and that it is desirable to have a uniform taxing

[16] See Seligman, *Essays in Taxation*, 9th ed., New York, 1921, pp. 19–32, 56–62; Bullock, *Selected Readings in Public Finance*, 2d ed., Boston, 1920, pp. 278–349; *Proceedings* of the Fourth International Tax Conference, 1910, pp. 299–310; and such textbook discussions as Jensen, *Problems of Public Finance*, New York, 1924, pp. 235–255, and Lutz, *Public Finance*, New York, 1924, pp. 320–350.

system throughout the state, (c) the additional fact that the tax has usually produced an adequate revenue for state and local purposes, and (d) finally by the fact that the administration of the tax has been so inefficient that many of the worst theoretical evils of double taxation have not materialized.

The last point refers to the failure of the tax assessors generally to discover "intangible personal property." It might be illustrated by the case of the two homes mentioned above, in which case the intangible is the mortgage, or it may be illustrated by the case of two manufacturing establishments in the same city, perhaps competitors in business, and each having a valuation of $500,000, covering land, buildings, machinery, and goods on hand. One of these plants, we will assume, is owned by a single wealthy individual. There are no mortgages upon his establishment, and there are no stocks or bonds outstanding against it. The assessor looks over the premises, makes his calculations, and puts down $500,000 as the value of the property. This plant then pays one tax, upon the basis of the valuation given. The other plant, however, is owned by a corporation composed of fifteen men, who hold among them, let us say, $500,000 worth of stock, for that is both the valuation and the capitalization of the company. The assessor finds the physical plant of the corporation and assesses it at $500,000. The tax upon this amount is paid by the corporation as such. If he could also find the outstanding stocks he would have to assess them also but in this case against the several owners in proportion to their holdings. In other words the fifteen owners of the second plant would have to pay twice the tax paid by the single owner of the competing plant. They would have to pay once as a corporation, and once as individual stockholders. In fact, but not in law, this would be a case of double taxation. Furthermore, if all stocks and bonds were found by the assessor, and if the tax rate were fairly high, it might take a quarter, a third, or even a larger share of the annual dividends or interest to pay the local tax.

The obvious injustice of such a system of taxation has led to the wholesale concealment or non-declaration of intangibles. The tax puts a premium upon evasion and dishonesty, especially when the rate is high. An obvious result in most cities has been the shifting of the tax burden upon those classes of property which cannot be hidden, *i. e.*, land, buildings, machinery and equipment, and stocks of goods. In effect, therefore, the so-called general property tax has tended to be transformed into what is little more than a tax on real property and

on the more bulky and tangible forms of personalty. The owners of real estate pay most of the tax, and that is why they have found grounds for dissatisfaction.

In the larger cities the breakdown of the general property tax both in theory and in practice is most evident to all observers. We should expect, for example, to find the greatest accumulations of personal property in cities, and also to find the amounts or values of such property increasing from year to year. It is a fact, however, that a number of states report a steadily declining percentage of the value of property assessed to be personal property, and that the decline seems to be most pronounced in states which contain large cities.[17] The situation became so bad in New York that it was found wise to abolish the property tax on the more important forms of intangibles and to substitute therefor other special taxes. In Minnesota, Maryland, and other states, intangibles were put in a class by themselves, were exempted from regular property taxes, and were subjected instead to a "money and credits" tax at a fixed and very low rate. It was thought, and rightly, that a fixed low rate would reduce the premium on dishonesty, that more intangibles would be declared for taxation, and that the total tax yield from this source would be increased. A few other states have taken still different steps to solve the problem, with the result that to-day it is well-nigh impossible to compare the personal property returns of one state with those of another. Taking the 1922 returns as they are, however, and excluding New York state for the reason that it reports too little personal property to be considered along with other states, it appears that the personal property assessment in cities of over 30,000 inhabitants is only 33.8 per cent of the real property assessment, whereas in smaller places and in rural districts personal property amounted to 44.8 per cent of real property.[18] This

[17] Jensen, *Problems of Public Finance*, pp. 251–252.

[18] The figures reported in *Financial Statistics of Cities*, 1922, and *Financial Statistics of States* for the same year, itemized so as to show the New York state figures separately, are as follows:

	Valuation of Real Property	*Valuation of Personal Property*
Cities of over 30,000 except in New York,	$29,362,770,957	$ 9,945,332,074
Rural districts and all places of less than 30,000 except in New York,	$31,289,756,095	$13,025,203,692
New York, both urban and rural,	$18,159,509,540	$248,676,834
Totals,	$78,812,036,592	$23,219,212,600

Because of many confusing factors we must again express a caution against the placing of much reliance in these figures.

difference is due to a combination of factors, one of which, as we have said, is the fact that the laws now make so many exemptions of different classes of personal property found in cities. At the same time it is due in part to the fact that the rural assessor finds and lists live-stock and farm machinery, whereas the city assessor is unable to discover the large accumulations of intangibles in his assessment district.

Opinions may differ on the question of whether, as a result of the failure of the general property tax to reach intangibles, an unduly heavy burden of city taxes is laid upon real property. We need to remember that many of the municipal services enure directly to the benefit of real property, and also that such property in a steadily growing city gets an "unearned increment" in value which goes to the owner and which he can realize when he sells his land. The single tax advocate wants to place the entire burden of supporting the government upon the land, and to deprive all private owners of rents or profits coming from land ownership. Without committing ourselves upon these matters, we can say that real estate pays to-day relatively more of the cost of local government than the theory of the general property tax presupposes. We can also assert that in cities where chief reliance for local revenue is placed upon the general property tax, and this means in most American cities, a great many persons who receive the benefits of city government do not pay direct taxes to support it. This is a violation of principle that "every person having taxable ability should pay some sort of a direct personal tax to the government under which he is domiciled and from which he receives the personal benefits that government confers."[19] Some of these persons avoid direct taxation by owning no real property, and by investing their fortunes in and getting their incomes from intangibles which are not disclosed to the assessor and hence pay no direct tax. Others have incomes from professional services, salaries and wages, but as they live in rented houses or apartments, and own no real estate and very little personalty, they also escape direct taxation.[20] The latter would avoid taxation even if the general property tax were perfectly enforced since the tax applies only to those who own property. Thus we see that, whether adequately enforced or not,

[19] *Preliminary Report* of the Committee appointed by the National Tax Association to prepare a plan of a model system of state and local taxation, p. 4, printed in *Proceedings* of the National Tax Association, 1919, pp. 426–70.

[20] See pp. 181–182.

the general property tax alone is not a sound tax system in large cities, and that in fact the tax cannot be carried out in the way required by the theory behind it. The possibly undesirable social and political consequences of having in cities large numbers of voters who pay no direct taxes have already been adverted to.[21]

NEW PROGRAMMES OF URBAN TAXATION

The demand for a broader and more diversified system of local taxation has become particularly insistent in recent years. With the rapid increase of local expenditures, coupled with a failure of assessed valuations of property to keep pace, the tax rates in cities have gone higher and higher. Real estate dealers and those who own rental properties have been able to shift this burden to a large extent to others through higher sale prices and rents, but home owners and other classes of property owners have had to carry an increasing burden. The burden on real estate has become so heavy that the need for relief can hardly be denied. How can the readjustment be made? State and city governments have made official investigations of the problem, and in addition there have been committees appointed by the National Municipal League, the National Tax Association, and other societies, which have contributed valuable reports.[22] We refer to a few of these studies in the following pages.

The problem is one which cannot be dealt with effectively from the point of view of the city alone. Such is the nature of our constitutional system that a city does not have complete power over such fundamental matters as taxation. Furthermore, a city is but one unit, and a subordinate one legally, in a complicated system of government. It needs to recognize its place, and to acknowledge also the need of having uniformity in tax laws over fairly extensive areas. The state is the smallest unit that we can think of for laying down comprehensive and successful tax laws, and it is in addition the most logical unit for administering certain important taxes. Municipal home rule in taxation may properly be limited to the adoption of purely local taxes upon minor and peculiarly local businesses and other local subjects, and to the modification of tax assessing methods and tax administering practices to suit local needs.

This does not mean that the needs of the cities may be ignored in

[21] See pp. 106, 158–9, 178–82.

[22] Some of the literature upon this subject is mentioned in the references at the end of the chapter.

the adoption of a taxing programme. On the contrary, the revenue needs of the cities exceed those of the state governments by a very considerable margin. In 1922 the cities of over 30,000 inhabitants each, including about one-third of the national population, had governmental-cost payments of $2,222,566,519, whereas all the 48 states together had governmental-cost payments of only $1,280,319,931, or nearly one billion less than the expenditures of the cities. The per capita figures are even more striking, for the states expended only $11.82 per capita (governmental-cost payments) whereas the cities expended $57.38 per capita, or nearly five times as much per inhabitant.[23] The city of New York expended 389 millions to 141 millions expended by the state; Chicago had to spend 149 millions (exclusive of county expenditures) as compared to 52 millions expended by the state of Illinois; and the expenditures of Philadelphia (108 millions) exceeded those of the state government of Pennsylvania by 20 millions. These facts but illustrate the importance of devising state tax laws with a view to providing cities with adequate sources of revenue, and also of making the burden which is so heavy upon the cities a fair one as between man and man. The state must enact the tax laws, and it must even administer some of them if that work is to be done effectively and equitably, but somehow a large part of the revenues must reach the coffers of the cities for expenditure.

The committee appointed by the National Tax Association to work out a model system of state and local taxation proposes a fundamental reorganization of our taxing system. Its plan, while admittedly not perfect, does conform to existing legal and economic conditions, and is an undoubted improvement upon most existing tax systems in our states.[24] It recognizes three subjects of taxation as transcending all others in importance. These are (1) the great stream of personal income constantly flowing in to men, women, and children in every taxing district; (2) tangible property, both real and personal; and (3) the activities of business in all their various forms. Income, property, and business, all have tax-paying ability although in the long run most taxes must come directly or indirectly from income. Each individual should pay something directly from his personal income to the government because he enjoys its protection and services and should be made to feel responsible for its efficient conduct. Property should pay some-

[23] *Financial Statistics of Cities*, 1922, pp. 154, 177; *Financial Statistics of States*, 1922, pp. 54, 57.

[24] See footnote 19, above.

thing as such because it also enjoys governmental protection and benefits directly from governmental, and especially from municipal services. Business, too, receives concrete benefits from government and might well be asked to contribute to its support. The committee's proposal is, therefore, a diversified tax system resting primarily upon three pillars, the personal income tax, the tangible property tax, and the business tax.

The personal income tax. In addition to the federal income tax law, there are now state income tax statutes in Wisconsin, Massachusetts, New York, and some seven other states.[25] Successful administration in the three states named has advanced the state income tax beyond the experimental stage. Any state with good administrative standards can tax incomes effectively if it provides for central administration of the tax instead of local, if it insists upon using the merit system in the selection of the staff of the income tax bureau, if it limits the tax strictly to the net income of private individuals, and if it keeps the rates low. The rates may be progressive if not raised too high. It is important also to bear in mind that one purpose of the tax, namely that of making every person, so far as possible, contribute something directly to the state and local governments, will fail to be accomplished unless the amount of the income exempted from the tax is kept fairly low.

As a revenue producer the state income tax has proved fairly important to the local units in those states where under the law the proceeds are turned back wholly or in large part to them. In Massachusetts and Wisconsin substantially all of the income tax is turned over to the municipal and school authorities; in New York nearly 50 per cent of the proceeds are so disposed of. For the year 1922 the city of New York received from the income tax over 10 millions, Boston received nearly three and a quarter millions, and Milwaukee obtained close to two millions of dollars, while the smaller cities in the states mentioned received sums roughly in the same proportions.

The tax on tangible property. The state personal income tax is in one sense a substitute for the tax on intangible personalty. The abolition of the tax on intangibles reduces local revenues sufficiently to make it necessary to find some such tax to make up the decrease in revenues. At the low rates applied by the states up to this time, however, the income tax has not been and will not be sufficient to supply the local and state governments with all the revenue needed.

[25] Jensen, *Problems of Public Finance*, pp. 372–79.

The tax upon real property must, therefore, remain, and it is justified also by the other considerations mentioned above. The committee of the National Tax Association would also retain a low rate tax on *tangible* personal property. Moveables of all kinds such as machinery, equipment, stocks of goods and materials on hand, tools, furniture, jewelry, and similar tangible goods would thus continue to be taxable, although small exemptions of household and personal effects would be allowed per family or person. We discuss hereafter the problems of assessment. The proceeds of the tax on tangible property would go to the cities and other units in proportion to the several rates of taxation fixed by them.

The business tax. A number of states already levy special business taxes in the form of gross or net earnings taxes, or taxes proportioned to other evidences of the supposed tax-paying ability of the firm or corporation. As a rule these taxes apply only to some selected lines of business such as railroads, public utilities, financial institutions, and mines. In the South it is common for cities as well to levy business taxes, and a number of cities in Ohio, forced to desperate remedies by the Smith one-per-cent law, have also levied them recently. We should, perhaps, make a distinction between taxes on businesses such as railroad, telegraph, telephone, express, and insurance companies and the like which operate throughout the entire state, and taxes on such local businesses as retail establishments, pool halls, and theaters, which are almost wholly of local concern. A group of borderline businesses includes those which are located in one city but which sell their goods or services throughout the state or even throughout the whole nation. This third group would include manufacturers, wholesalers, millers, and bus lines as well as many others. It is clear that taxation of the first group of businesses had best be left to the state, but that, on the other hand, it is of little concern to the state as a whole how much taxation is collected by local authorities from moving picture theaters and taxi-cab companies. The committee already mentioned proposes (somewhat reluctantly) taxation by the state of the net income of businesses at low, proportional rates.

We have made this brief summary of this most important committee report because it seems to us to take a long step toward an adequate solution of the municipal revenue problem. Taken together the three taxes would probably succeed in producing an ample municipal revenue, and also in adjusting the tax burden somewhat better than to-day, although it is likely that the property tax would continue

to be the chief source of revenue. At the same time the property tax, relieved of the futile attempt to tax intangibles, could be administered by the local authorities under state supervision with somewhat improved results. The other taxes, namely the income tax and the business tax, would be administered by the state, probably through its tax commission, but care should be taken to see that a very large part of the proceeds in each case was distributed to cities according to their population, their assessed valuation, or their needs. In order to bring about better local administration the state might treat the distribution of these taxes or some part of them to the localities as a sort of subvention or grant in aid, withholding payment from any city or school authority which failed to come up to certain minimum standards. A threat directed at the purse has often a most enlightening effect.

Other proposals. Certain other major tax-reform proposals made in recent years have, in general, been rejected by the economists. One which we have already mentioned, the single tax, aims to put the entire burden upon the land. The purpose of this tax is both social and fiscal. Since land has not been produced by man it is felt by many that no one man or class of men should be allowed to reap an unearned benefit from it. Population alone makes land valuable, it is said; hence the whole population should reap that part of the fruits of the soil which usually goes to the owners or landlords as rent. Let the rent be taken by the public as a tax. This will give the government an adequate revenue and there will be no need of taxing the labor or the product of man's hands. Heavy taxation of land will spur owners to build upon it in order to make enough to pay the taxes. No man will then be discouraged from labor by the fear of taxation; but the sloth who merely owns land in the hope of getting a speculative profit therefrom, and who does not produce anything will find it necessary to work. Under the single tax, it is argued, no man will ever get rich again at his fellow men's expense by monopolizing through ownership the gifts of nature. In the western provinces of Canada several large cities tried out the single-tax experiment but did so, unfortunately for them, at a "boom" period and just prior to a collapse in real estate values. The results were almost disastrous. When the landowners received no rent and could not sell their lands due to the sudden slump in values, there was nothing left wherewith to pay the taxes, and the cities had to carry on their books long lists of parcels of land on which the taxes had not been paid. The land was of no

value to the city governments since it could not be sold. Thereupon the officials had to proceed again to broaden the basis of taxation. It was found necessary once more to tax the fruits of man's own labor in order to derive enough revenue for the governments. This experience has served to convince many persons that the land tax by itself is not an adequate basis for a revenue system.

The sales tax has also been seriously proposed as a major source of municipal revenues, but has not yet been tried in this country.[26] The habitation tax has been suggested as a rough substitute for an income tax, and as a means of reaching persons who rent their dwellings.

Miscellaneous city revenues. Distinctly different are the various minor specific taxes and charges which have been suggested, not to supplant any major tax herein previously proposed, but rather to supplement in a small way the existing systems of municipal taxation. Before the coming of nationwide prohibition many cities had such an incidental source of revenue in the sale of liquor licenses. To a number of cities the loss of this revenue was a fairly serious matter. Among the other minor taxes and charges which have been proposed, most of which are already used in many places, the following are worthy of mention:

1. Taxes on billboards. Many persons look upon this tax more as a means of restricting a nuisance than as a source of revenue.

2. Taxes on theaters and places of amusement, levied according to seating or other capacity, and at rates somewhat above those now charged in many places.

3. Taxes on soft drink parlors, dance halls, cabarets, etc.

4. Taxes on automobiles and gasoline. Because of the statewide licensing of automobiles the so-called local "wheelage" taxes are now nearly out of the question in many places. The gasoline tax also has been practically monopolized by the states, and it is, of course, more easy to enforce as a state tax than it would be as a municipal tax. So much of the wear and tear of automobile traffic is on city pavements, however, that it would not be unreasonable to ask the states to apportion some part of both the automobile and gasoline taxes to the cities. This is especially true where the cities have lost the power to tax automobiles as personal property.

5. Charges or fees for services such as the inspection of the installation of plumbing and electrical fixtures, the examination and approval

[26] *Final Report* of the (Boston) Committee on new sources of revenue, Boston, 1911.

of building plans, the removal of garbage and refuse, the maintenance of sewer connections, and for all other services for which such charges could be computed fairly. It is, however, an important question of policy whether cities should return to a charge basis for some of these services which are now supported mainly by taxation.

6. Charges or fees for the numerous privileges now enjoyed by many individuals and companies in streets and public places.

Such a list as this could be extended almost indefinitely. It might be possible for a city to get a considerable revenue by using to the full its power to tax particular businesses, to license, and to make service charges. Many cities probably already have a number of minor taxing powers which they do not regularly use. To-day cities probably obtain less than five per cent of their total revenues from these miscellaneous sources. By a radical change of policy they might succeed in doubling this income, but it is doubtful whether they could do much more. Consequently we must not put too much faith in these various suggestions of minor sources of revenue. The principal sources of municipal income must continue to be the property tax and, perhaps, the income tax and general business taxes. Three sources which remain to be discussed have also a considerable importance, namely special assessments, the earnings of public service enterprises, and subventions from the state.

SPECIAL ASSESSMENTS

As we leave the field of taxation properly so called, we come to that form of quasi-taxation usually denominated "special assessments." The taxpayer must contribute his property tax, income tax, or business tax to the government without necessarily having any knowledge of the uses to which his money will be put, and without any assurances that he will receive any or proportionate benefits from the government for his payment. He pays because he must pay. His tax payment goes usually into general public funds. He cannot designate his forced contribution as intended for any particular use or fund. Some of the money he pays in may actually be used by the government to enforce against him, for his own supposed good, laws to which he is strongly opposed.

Special assessments have behind them the same enforcing power as that which applies the ordinary taxes, but they are distinguished from the latter by the fact that they are based essentially on benefits prom-

ised or already given, and are to some extent proportioned thereto. In many places they are called "benefit taxes," and in some localities it is difficult to levy them unless a majority or even more of the property owners who are to pay them petition for the improvement which is to be provided. The Bureau of the census defines them as "compulsory contributions levied under the taxing or police power to defray the costs of specific public improvements or public services undertaken primarily in the interest of the public." [27] They are among our oldest forms of local revenue, and are now authorized to some extent in all states.

In the revenue system of the nation as a whole there is no present place for special assessments, and even the states use them directly very little. They are peculiarly adapted to the needs of the local units, and are especially appropriate as a means of financing local improvements which add a measurable value to real estate situated in the immediate vicinity. The extent to which they are used may be indicated by the figures for 1922, when every city but six having over 30,000 inhabitants reported some revenue from this source, and the total reported was $103,134,949.[28] Cities of all sizes made about equal use of the special assessment method, but there were marked variations among cities as separate units. While the per capita average revenue from this source was $2.66, one city took in as much as $20.08 per capita, one city reported only one cent per capita, and six cities reported nothing.

The advantages of special assessments are fairly evident. (1) When properly applied they are eminently just, for they prevent one man from paying for the special betterment of another man's property, and at the same time they prevent the benefited property from paying too much since the law in most places forbids the levy of special assessments (a) beyond the benefits conferred by the improvement, and (b) beyond the cost thereof. (2) Since special assessments are usually not considered as a part of the tax levy and hence are excluded from the tax limit, and since special assessment bonds are also generally placed outside the general debt limit, the special assessment method

[27] *Financial Statistics of Cities*, 1922, p. 23.

[28] *Ibid.*, p. 129. The sum here given includes the income from both "special assessments" and "special charges for outlays," but for our purposes these are the same. It is interesting to note that all outlays on permanent improvements reported by cities of over 30,000 inhabitants in 1922 amounted to $617,935,628. Special assessment revenues, practically all of which go into outlays, constituted approximately one-sixth of this total.

of financing permits public improvements to be made without holding up or endangering other public projects, and without increasing unduly local tax rates and debt. (3) Much property which is really benefited, *i. e.*, increased in value, by local improvements, is exempt from ordinary taxes, but such property must usually pay its fair portion of an improvement under the special assessment plan. Thus the citizens generally would not have to pay for paving or sidewalk in front of a church or a private school. (4) When properly administered, special assessments are practically as certain of collection as ordinary taxes on property. Along with those taxes they are usually made a first lien on the property benefited, which is in all cases incapable of escape, since it is the land itself, and which may be sold in case the assessments go unpaid.

It is easy, however, to abuse the power of special assessment. To be fair the policy must be followed out consistently, for to acquire a park in one neighborhood at general public expense, and then to turn about and acquire another somewhere else at the expense of neighboring property puts a double expense upon the latter. It must pay general taxes for the first park and special assessments for the second, whereas property in the vicinity of the first park, fully as much benefited, need pay only general taxes. Furthermore, since every local improvement is to some extent a general benefit, the city should be slow to attempt to finance any local improvement entirely by special assessments, except perhaps in the case of sewer connections, curbing, and sidewalks. If the whole public must bear some part of the expense in the case of grading, paving, parks, and other major improvements, there will be less of a tendency to rush forward into needless expense. One of the real dangers in the special assessment system, even when the assessments may be paid in installments over a period of years, as is the rule, is that some property may be temporarily overburdened with such charges. Many a poor man, who has acquired a property at a distance from the center of the city when land prices were low and no improvements had been installed, has found the improvements all ordered within a short period, and almost all on the basis of special assessments, with the result that such charges far exceed his taxes and continue to do so for years. There is much justification, therefore, for giving the property owners immediately concerned a veto in some cases on special assessment projects.

It is undesirable also to have special assessments or charges used, as they are in some places, to pay for current expenses such as street

sprinkling and oiling. These services do not add measurably to the value of the property as a pavement would, or a park. The improvement paid for by special assessments should be a fairly permanent one, one which could be definitely added in when the property owner is trying to fix a selling price for his land. Annual assessments for sprinkling are more a burden than a permanent benefit. Furthermore the benefits of sprinkling and oiling are enjoyed by the entire public. Proper uses for special assessments would include, among other improvements, parks, streets, pavements, sidewalks, drains and sewers, water mains and connections, and in some cases street railways.

The procedure in the provision of local improvements by special assessments is one with which all owners of urban land should be familiar. In many places the movement for such an improvement must be initiated by owners of a certain percentage of the property to be benefited. Some laws make the improvement mandatory in case the owners of more than half of the abutting or the benefited property sign the petition. Where the public bears some of the expense, the council usually has full authority to order or to reject the improvement. Publicity is required, however, and is highly desirable.

Following a petition of owners, if such is required, the council or board usually adopts a resolution ordering the first steps to be taken toward making the improvement. This involves the designation of the precise improvement desired, and the nominating of some municipal officials or a commission of citizens to view the premises, to estimate the cost of the improvement, to determine what land will be benefited thereby, and to set down in detail the probable benefits to, and the portion of the assessment to be borne by, each parcel of land in the district. In the course of its work the commission will study the local situation, will interview owners, and may hold public hearings. The desirability of having men of training and experience to serve on these commissions cannot be overemphasized. When their work is done a complete report is prepared for the council. That body holds a hearing upon the matter, and either adopts in toto or with certain changes, or rejects the so-called "assessment roll." If the work is ordered the assessments are also levied, but the objecting property owners may still have an appeal to the courts, going even to the United States Supreme Court in cases where the due process clause of the Fourteenth amendment is involved.

THE EARNINGS OF PUBLIC UTILITIES

American cities generally own their water works, a few own street railways, a somewhat larger number own gas works, and still more own and operate electric lighting plants. In addition various cities own markets, public scales, and miscellaneous other public facilities classed by the Bureau of the census as "public service enterprises." The total revenues reported from these facilities in 1922 by cities of over 30,000 inhabitants were as follows:

Water supply systems,	$125,504,767
Electric light and power systems,	18,734,290
Markets and scales,	2,759,544
All others,	37,506,005
Total,	$184,504,606

With regard to revenues from this source there are in general three possible policies for a city to follow. The *first* is that of running publicly owned utilities at a loss and of making up any deficiency from taxation. The argument for this procedure is, in essence, that the utilities are a benefit to all local property and to all inhabitants, whether they use them or not, that for this reason all should help to pay for them, and that it is desirable to stimulate the use thereof by offering low rates. In the case of water supply it is sometimes argued that a more general use of good clean water is so desirable from a social point of view that this utility should be made free to the public and should be supported entirely by taxes. Newspaper reports indicate that the city of Vienna has been pursuing the policy of running utilities at a loss in recent years, and that the result has been a sharp increase in local taxes. A *second* policy, which is substantially the reverse of the first, is that of making a profit if possible on the operations of publicly owned utilities, and of using the surplus to help lower the tax rate. This line has been followed to some extent by some English and some continental European cities. The usual objection to it is that an increase in utility rates, whether for water, gas, electricity, or street railway service, is borne very largely by the poorer classes and that the tax relief is enjoyed to a large extent by the well-to-do.[29] In any case it looks like robbing Peter to pay Paul.

[29] Of course any public utility may make more net profit on fairly low rates than on rates that have been raised too high. As a general rule, however, rates must be raised if net profit is to be increased.

The *third* policy which seems to have been most favored in American cities is an intermediate one, namely, that of operating utilities at cost. It is argued that each utility should stand upon its own feet and not be compelled either to support or subsidize other services or to be helped out by taxes. In the case of the utilities already named it is possible for a good accountant to calculate the cost of the service and also to arrange a scale of charges which will be both just to all consumers and adequate to produce the needed revenue.

It is difficult to obtain agreement on the question of what is cost in the operation of city-owned utilities. The suspicion frequently arises that a city is not keeping complete and accurate accounts, and that it is permitting some utility costs to be borne by the taxpayer. Some persons insist that the utility even when in public hands should pay regular taxes, state, county, and municipal, just as if it were in private hands; that it should pay for its share of the services of the mayor, the council, the treasurer, and other municipal officers, just as a private corporation would pay its president, directors, and others; that it should set aside a depreciation reserve to provide for replacing parts of the plant as they wear out; that it should pay off its own bonds; and that, on the other hand, it should charge other departments for the services it renders to them.

If all of these things were done, cities might often find that their local utilities had not been making both ends meet. On the basis of their present bookkeeping, however, it would appear that city-owned utilities more than pay expenses. In 1922, for example, when public service income was 184 millions, public service enterprise expenses were reported as only 106 millions. That is to say, as the books were kept, only 57 cents of each dollar of income was needed to pay expenses of operation. The rest of the income could be used to pay interest, to help pay off principal of borrowings, to replace machinery and equipment worn out in the service, and to extend the service to new consumers. This is not conclusive, of course, but the figures establish a reasonable presumption that cities are not on the whole operating their utilities at a loss. If they were doing so, and other things were equal, cities owning and operating extensive public utilities would probably have higher tax rates than those owning fewer utilities, and some of the additional taxes would in the long run have to be put into the maintenance and operation of the utilities. There is very little evidence to prove the case, since the other factors in the

situation are never the same.[30] Public utility earnings, it would seem, probably cover public utility expenses, but it is unlikely that they do much more.

SUBVENTIONS OR GRANTS IN AID

American cities receive money from the state under a number of different conditions. In some states the laws taxing incomes, inheritances, mortgages, and corporations provide that the state shall collect the tax and shall distribute part or all of the revenue therefrom to the local units in which the taxable subject was located. Such assigned revenues come to the local authorities to be put into their general funds and to be expended by them without specific restrictions. Correctly speaking such payments are not subventions or grants in aid. It is characteristic of the latter, as a rule, that they come from state trust funds and general funds, and not from particular taxes; and that they are paid to the local units upon the express condition that they be used not for general purposes but to promote some definite function, such as education. In theory, also, the state should have inspectors to make sure that moneys thus granted are used in the manner provided by law, and it should also empower some state

[30] Taking the 1922 statistics for the twelve cities of over 500,000 population we find that the two subway-owning cities, New York and Boston, had the highest per capita property taxes and revenues, that the group of cities which to some extent own and operate electric utilities, namely Chicago, Detroit, Cleveland, Los Angeles, and San Francisco, stand next both in per capita property taxes and in general revenues other than utility earnings, and that the five cities which operate no important utilities of the classes mentioned, Philadelphia, St. Louis, Baltimore, Pittsburgh, and Buffalo, as a group stand lowest in both respects. This might indicate that the money of the taxpayers was being taken to help out the utilities. This may be true in one or two cases, but the per capita tax and revenue figures do not prove it. We have definite figures showing what the money was expended for, at least in large part, and we find that it went into education, health work, and other municipal services with but very little relationship to the utilities. It was these other municipal services which cost more on the average in the cities which owned and operated public utilities. Furthermore the number of cities compared is inadequate for the purpose of proof, and the group averages are very misleading. For example, Pittsburgh and Buffalo in the group of non-utility owning cities had total per capita expenses for all general departments exceeding those of Chicago, Cleveland, Los Angeles, and San Francisco, and equaling those of Detroit. In other words the tax rates, and especially for a single year, prove very little. The differences in expenditures and in tax rates is very largely a difference in the cities themselves and in the conditions under which they operate.

authority to withhold payment in case of the failure of the local authorities to comply with the given conditions.

We have spoken elsewhere of grants in aid as a means of state control over cities and of stimulating the latter to perform efficiently their administrative duties.[31] If the states themselves had definite social policies, freedom from political control of the machine type, adequate revenues, and high standards of administration, subventions might prove to be a most effective weapon in their hands to promote wisdom and competency in local administration. Unfortunately these ideal conditions do not exist. Some states make very little effort even to check up the expenditure of state aid by the localities. Cities and school districts in some places feel so sure of getting the state aid that they make practically no effort to conform to the law. The most that we can say is that the majority of the states have somewhat higher standards than the smaller local units. Large cities are as a rule helped very little by the state inspectors. Furthermore, the state taxes usually take more money out of the larger cities than is returned to them as subventions, whereas the reverse is frequently the case with the smaller and poorer communities. It is, therefore, mainly the smaller cities, the villages, the towns, and the "weak" school districts which benefit materially from state grants for education, highways, and the like.

The argument for subventions must to-day rest upon two points. The first is the potential control given to the state to direct local activity to higher and better ends. Subventions may prove to be more effective in the future than they have been in the past in linking together the state and its local units in the coöperative performance of common functions. The second argument lies in the opportunity given by the subvention for a more equitable adjustment of burdens and services among the various local units of the state. If we assume that the entire state is interested in the education of every child within the state, and that the whole state will suffer if some children have their educational needs neglected, we can easily see the basis of the argument. On the one hand a uniform tax over the entire state will bring in a large revenue with more fairness to all taxpayers than could a series of local taxes at different rates, and can frequently be more economically and effectively administered than could the separate local taxes. On the other hand the money thus obtained can then be inexpensively apportioned to the various units according to their needs.

[31] See pp. 72–73.

In 1922 every city of over 30,000 reported some revenues from grants and subventions. The total amount reported was $99,085,169, or about $2.55 per capita. Great variations in policy among the states was indicated, however, by the fact that some cities received over $10 per capita in subventions while others received only a few cents.

THE ASSESSMENT OF REAL ESTATE

We have reserved for separate discussion one problem of tax administration which stands out above all others in importance in the municipal revenue system. As at present, so in the immediate future, the real property tax must continue to be the chief support of the local revenue system. To the property owner, therefore, few urban financial problems are more important than that of bringing about an honest, equitable valuation of property for tax purposes. The desired goal is fortunately within the reach of any large city which earnestly strives to attain it.

American property-taxpayers have suffered gross injustice under the slipshod methods of assessment once used almost everywhere and they still have much to complain of in some large and many small cities and in rural districts. Democratic theory required that the assessors be popularly elected, "responsible to the people," and that terms of office be short. No special training for the office was required, and only too rarely was competent service obtained. The pay was small on the general understanding that the work would require only a little time for a few months of the year. Inadequately instructed, poorly paid, and perhaps without experience, the assessor was sent forth almost without tools or equipment. If he was honest and conscientious he went from block to block, and within each block from house to house and then to the factory or the store in order, making notes of what he saw and putting down his own estimates of values. Perhaps he had the aid of previous assessment lists (slender reeds for support considering the way in which they had been made up) and the use of an old map showing streets and other boundaries. Beyond these he was probably without equipment. He actually failed to find some property—real property—for we are not here considering the assessment of personalty. Of some parcels he had inaccurate measurements. He had no accurate recent surveys to go by. Since he was himself usually a man of small means he was better able to "size up" the poor man's home than the fine residence or the factory or large

store of the man of wealth. He tended to overvalue small parcels and to undervalue large ones. His information as to the age of different buildings and as to qualities and types of construction was all too commonly inadequate for his purposes. Knowing that other assessors would probably do the same thing, he tried to keep low the assessments in his own district in order to save it from bearing too large a portion of city-wide, county, and state-wide taxation. All of these things, we repeat, might happen even when the assessor was honest and was trying to perform his duties. When he was under the control of the boss, or was personally venal, the chances of unjust assessments being made were greatly increased.

Long consideration of the defects in ordinary unscientific and political methods of assessing property has led to the formulation by administrators and students of a group of standards for urban real estate assessment, all attainable and calculated to lead to greatly improved results where they are put into effect. The main points are as follows:

1. **Organization and personnel.** It is felt that the department of assessments should have a single responsible officer in charge of all actual work, associated with whom for a short period each year may be two or four other city officers to act with him and under his leadership as a board of review of assessments.[32] The head assessor should be appointed, not popularly elected, and the selection should be determined by the candidate's training and capacity. In the larger cities the head assessor should give full time to his duties, and should receive a good salary.

The assessors who do the actual field work should be appointed only after passing a genuine test of their ability to perform their duties, and should be protected in their positions from political interference, and from removal without cause. They should give full time to their work and should receive ample pay. Before starting out upon their work they should be fully instructed as to the tax laws and as to methods of assessment. The aim here is to establish property assessment as a distinct vocation in which there is both room and the incentive for specialization.

2. **State supervision.** As long as the state continues to levy a state-wide property tax, there can be no question as to the need of a state tax commission or some similar body to equalize the assess-

[32] Lawson Purdy, "The Assessment of Real Estate," supplement to the *National Municipal Review*, vol. VIII, p. 514 (1919).

ments among the various districts. This work cannot be accomplished satisfactorily after the local assessments have been made, but must be done in advance by means of advice and direction to the local assessors. The uniformity which is needed in property assessment can be attained only through the enforcement of uniform and scientific standards by some central supervising body. Another important function of the state tax authority is that of valuing railroads and other properties which are located in more than one taxing district, and of allocating to each district that portion of the total value which is to be locally taxable.

3. **Improved methods of work.** Even without state supervision the large city can introduce improvements in methods of assessment which will greatly increase the fairness of the results. If the work is to be well done it should be continuous. The assessors, devoting full time to their work, should keep constantly in touch with real estate transfers and the ups and downs of the real estate market. Instead of coming only at long and irregular intervals as it does in some places, careful reappraisal of property needs to be going forward all the time.[33]

A second point is that the land should be valued separately from buildings. The elements of value for the two are distinctly different. Land may go either up or down in value, depending upon changes in the direction of the city's growth. In general the land values in growing cities which have not suffered from excessive "booms" or inflation have tended to go up, or "appreciate." Buildings, on the other hand, usually "depreciate" from the beginning, although a subsequent increase in building costs may make an old building temporarily more valuable than it was a few years before. These are but illustrations of the differences between land and buildings which call for separate treatment of the two.

(a) **The assessment of land.** Land values in cities depend upon such factors as location, nearness to corners, area, shape, grade, topography, and a number of others, including the uses to which other lands in the vicinity are being put. The new zoning laws in many cities seem to have a tendency to stabilize values by preventing incongruous uses of land within the same district. To ascertain the "true and full" value of land, therefore, the assessor needs a number of helps of a very practical nature. *First* of all he needs accurate maps showing the

[33] It was reported in 1924 that "in Cincinnati there has been no revaluation [of property] since 1917, while in many other counties there has been none since 1910." Upson (ed.), *The Government of Cincinnati and Hamilton County*, p. 122.

locations, sizes, and shapes of all plots of ground within the city. A "block and lot" map, now considered essential, is one which shows every block and tract of land in the city. It must be drawn to a uniform scale, and be large enough to show clearly every separately owned lot and its dimensions. Each block throughout the city has a separate serial number. The assessor with a block and lot map covering his district to aid him has no excuse for overlooking any property or for ignorance of the size of each parcel. The central office has also a check upon his work. A "land value map," kept at the central office, shows all the blocks and unplatted tracts in the city and bears figures, which must be changed from time to time, showing the value of land per front foot on each side of every block and the acreage value for unplatted parcels. Other material aids for the assessors are properly arranged field-books, and record cards to be filed in the central office showing every separately owned plot of land in the city with a full description thereof, a description of any buildings thereon, information as to transfers of ownership and of selling prices, and finally the name of the present owner.

In the *second* place there is need of standard units and rules for determining values. For lots of regular shape the usual unit is that of a strip of ground having a single foot of frontage and a normal depth. Thus if lots in the particular city are normally 120 feet deep, the unit would be a strip 1′ X 120′. If the unit value of a particular lot were then found to be $100, it would be valued at $3,000 if 30 feet wide, and at $5,000 if 50 feet wide. But this is the simplest case of a lot of rectangular shape, normal depth, and with a location in the center of the block. A corner lot will ordinarily be more valuable; hence there must be a rule for measuring so-called "corner influence." Furthermore, the lot may be of an irregular shape, such as an L or a triangle, in which case its value will be usually somewhat reduced but need not be so necessarily. Finally the lot may be more or less deep than the standard lot. Here a "depth rule" must be applied, such as the Hoffman-Neill rule which is that two-thirds of the normal value of a lot 100 feet deep is in the 50 feet toward the front, and only one-third in the rear 50 feet, with other values assigned for greater or less depth.[34] We cannot stop to discuss the details of these matters, but the point is that there are reasonable rules which assessors can learn and apply if they will, and that it is fairer to all to have uniform rules applied

[34] Purdy, "The Assessment of Real Estate," supplement to the *National Municipal Review*, vol. VIII, pp. 524–25 (1919).

in the valuation of all property than to use guess-work with its tendency toward irrational and unjust variations.[35]

We come, *thirdly*, to the problem of finding unit values. How much is a piece of land worth? Many an economist would reply that "It is worth what you can get for it." This gives the assessor an important clue, for many parcels of land are sold each year in a large city, and sale prices do to some extent become matters of public information. It would be a great boon to assessors if there could be enacted and enforced state laws requiring that the true consideration be made a part of the document transferring title and be recorded therewith. The amount of internal revenue stamps affixed to the deed also gives an indication of the sale price. In some cases it will be necessary to use less reliable data. "Bid" and "ask" prices are useful to some extent, and so are rental figures. As to buildings the amount of insurance carried may be important. Some assessors solicit the opinions of real estate dealers which have to some extent the value of expert testimony. If the assessors carefully compile all the information as it comes in they will find in a few years that they have reliable data as to the value of a great many parcels. From the data actually in hand can then be calculated the values of adjacent parcels for which there is no definite information. Finally the accuracy of the results can be tested by putting down the figures upon a "land value map." Unreasonably low or high estimated values in one block will stand out clearly when compared with values in blocks round about.

(b) **The assessment of buildings.** The appraisal of building values can also be reduced to a set of rules which, if not perfect, can at least be called reasonable. Records in the office of the building inspector or of that office which issues building permits show when every building was erected, describe to some extent its size and the type of construction, and indicate the estimated cost. It is also possible to learn the costs of labor and materials at the time of construction, and at the time of assessment. Depreciation through use and the action of the elements can also be determined approximately. These are, then, some of the data with which the up-to-date assessor works. Under the best systems of building assessment he has a small book of rules describing different types of construction and giving estimates of costs for each type per cubic foot of contents or per square foot of

[35] "The Somers system," not discussed in the text, is a definite set of rules for property appraisal which has been put into effect in a number of cities.

floor space. He must measure up the building himself, ascertain the type of construction if that is not already fully recorded, and note the building's age and general condition. He needs to exercise his intelligence, of course, for no set of rules can tell him everything, and confusing situations sometimes arise. Many times a piece of land with an old building on it actually sells for more than the same property when the building was new. Usually the explanation is that the land has increased in value faster than the building has decreased. In another case he may find that a building erected for one purpose is within a few years used for another and less productive purpose. This may be a case of poor judgment on the part of the owner in locating his building, or it may simply be that he is following a mistaken rental policy. If the former be the case, then the value has gone from the building almost as completely as if it had been used a long time. For its surroundings the building is obsolete, and the assessor must in fairness recognize this fact.

A REVENUE SYSTEM IN SUMMARY

To summarize, an improved revenue system for American cities would include the following features:

1. A property tax, limited to real property and tangible personalty, to bear probably not over 50 per cent of the local burden of taxation instead of 67 per cent as at present, to be administered locally.

2. A low personal income tax at progressive rates, which would be administered by the state, but the revenues from which would be returned in large part to the local units. From this source cities should get from 10 to 20 per cent of their required local revenues.

3. A business net earnings tax, if the state saw fit to have one, also administered by the state with allocation of some of the revenue to the local units. Cities should not expect more than 5 to 10 per cent of their requirements from this source.

4. Miscellaneous minor sources of revenue, such as minor local business taxes and licenses, fees, charges for permits and services, etc., administered locally and yielding from 5 to 10 per cent of required revenues.

5. Special assessments to be used to pay for local improvements which add a definite and fairly permanent value to real property. Amount of revenue from this source variable according to needs, but probably not over 10 per cent of total requirements.

6. Municipally owned utilities to be run at cost with strict accounting to make certain that the rates pay all the costs. This source will, therefore, yield no net contribution to municipal revenues.

7. Subventions from the state, to be increased slowly as the state authorities become more proficient in the handling thereof, to yield perhaps 5 per cent of total revenues now but more in the future.

8. In addition to these suggestions as to revenue sources we must make note of all those improvements in the methods of assessing land, buildings, incomes, inheritances, business, and all other taxable subjects, which do so much to make the revenue system a fair one.

In this whole programme there is clearly nothing revolutionary, but instead only the steady extension of tax policies already agreed upon generally by students of municipal finance. The estimated yields are not intended to apply to any particular local situation, but are more in the nature of estimates of what may be expected over the entire country, allowing for many local variations. In the future as in the past no two states are likely to have the same revenue laws.

REFERENCES

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Local revenues from the points of view of policy and administration are covered by various contributions to the annual *Proceedings* of the National Tax Association, and also to its monthly *Bulletin*. Regular and special reports of the various state tax commissions also contain much valuable information. Standard volumes on various phases of the tax problem such as Seligman, *Essays in Taxation*, 9th ed., New York, 1921; Bullock, *Selected Readings in Public Finance*, 2d ed., Boston, 1920; Jensen, *Problems of Public Finance*, New York, 1924, and Lutz, *Public Finance*, New York, 1924, deal directly with some important municipal tax problems. Attention should also be called to the many excellent articles in *The Annals* of the American academy of political and social science, March, 1915, vol. LVII, "Readjustments in Taxation," and to the recent exhaustive study of the New York state tax system published as the *Report* of the Special joint committee on taxation and retrenchment, March 1, 1922, Albany, 1922, Short general discussions of American city revenues are those of Munro, *Municipal Government and Administration*, vol. II, ch. XLIII, and Maxey *An Outline of Municipal Government*, ch. 15.

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CHAPTER XXII

MUNICIPAL INDEBTEDNESS

THE POWER TO BORROW

The city's power to borrow money, like all of its other powers, must be conferred upon it by the state. In early days it seems to have been assumed that the right to borrow was of an incidental nature, a means to which a municipal corporation might resort in order to accomplish its legitimate ends. The explanation of this may be that in the beginning there was no sharp distinction between municipal and private corporations and that both were supposed to have powers of management over their private and business affairs. As the common law developed, private corporations continued to have the power to borrow as an incident to other powers, but municipal corporations, as they assumed more and more a public character, found the courts taking a stricter attitude as to them. The municipalities represented the public. Their obligations rested upon the entire community and became a direct burden on private property as the cities came to rely more completely upon taxation as a source of revenue. As the cities no doubt displayed gross ignorance and incompetence at times in their exercise of the borrowing power, the courts may have felt called upon to protect the taxpayers. Whatever the reasons may have been, however, the judges in some states began to assert that a city has no power to borrow unless the power is expressly conferred upon it by law.[1] This doctrine did not find acceptance everywhere, and there is still some disagreement among the courts upon the subject, but it has come to prevail to such an extent that to-day a large city finds it impossible to borrow money unless the power to do so is clearly expressed or has already been sustained by the courts. Persons who have money to lend in large amounts are not easily induced to lend it where the legality of the loan is doubtful.

What has been said about the power to borrow money should not be confused with the power to incur debt. If a city legally employs a laborer and he works for it a single day, the city has become indebted

[1] Dillon, *Municipal Corporations*, 5th ed., II, pp. 1323–1350, *passim*.

to him for a day's wages. Without the power to contract and thus to become indebted, a city could hardly carry on any of its important functions. All courts have recognized this fact, and have refrained from putting important obstacles in the way. There is much less danger of abuse, however, in the simple power to incur debt for services rendered and goods delivered than in the power to borrow money. Without the prospect of immediate or early payment, men will not easily turn their labor and materials over to the municipality. Thus there is a natural limit, so to speak, to the extent to which a city can become obligated without borrowing money. The borrowing of money, on the other hand, is a much more speculative matter, and there are very few natural limitations. Small cities, impoverished cities, poorly managed cities, have succeeded in spite of their handicaps in getting heavily into debt through borrowing. Furthermore, in the simple case of a city's incurring debt for services or materials, there are only two parties to the transaction, and there is only one payment of money. In the case of borrowing money, however, there are really three parties, and the money is handled twice. City X borrows from A in order to pay B for his property or his work. In this case the opportunities for peculation are increased.

We read frequently in the newspapers of cities issuing or selling their bonds. This is in most cases simply a euphemistic and misleading way of saying that the city is borrowing money and getting into debt. The bonds authorized and signed by the proper municipal authorities are simply the evidences of a city's debt, or of its obligation to pay interest from year to year and to repay the principal at the end of the period specified therein. The bonds of a city are in a sense of two kinds, first those which are the "direct and general obligations" of the city, and second those which do not have behind them a pledge of the city's entire credit and taxing power, but are instead secured as to repayment by some particular tax or other resource. In amount and in importance the first type of bonds easily outranks the second. It is the one type of municipal bonds which is attractive to conservative purchasers everywhere. Because of its greater security it is widely marketable and can be sold at a lower rate of interest than can municipal bonds of a more limited obligation. As a general rule, also, such bonds are "negotiable instruments," and are so protected by the laws of the different states that they may pass from hand to hand by sale or otherwise with full security.

The validity of municipal bonds is a highly technical legal subject.

It covers not only the question of the power of cities to borrow, but also the procedure which they follow in issuing their bonds. The average lawyer of general practice may be reasonably familiar with it, but the large trust companies and savings banks which buy and the bond houses which deal in municipal securities are inclined to lean upon a few attorneys in each of the large financial centers who have specialized in the subject. They want assurance as nearly perfect as possible that the bonds they are to buy and sell will, if need be, pass muster in the courts, and it is the special function of the bond attorney to study every detail of the law under which the bonds were issued, of the procedure in marketing them, and of the form they take and the manner in which they have been signed. The list of questions to which he must receive answers before he gives his opinion goes into every detail involved, and so careful is the experienced bond house that it will sometimes refuse to accept a large issue of bonds because of a very minor irregularity in signing or even in advertising the sale of the bonds.

All of this seems to the layman and sometimes to the city official very technical and foolish, but when everything is considered it is to the advantage of the city itself to have absolute assurance that the bonds it is about to issue are completely valid and are known to be so. It will mean better bids on the bonds and an easier sale. To the buyers, of course, it is not enough to have the word of the city officials that the bonds are legal. What they desire is the opinion of an expert who is interested in protecting their investments and his own professional reputation. For this sort of expert advice the bond house must pay well, which adds, of course, to the expense of marketing the bonds. This fact has led to two proposals, first that the bond laws of each state be so simplified and unified that they can be more readily understood and will not require the services of an expensive legal specialist to interpret them; and second, that the state itself should provide some officer or bureau to examine into the validity of local bond issues with the power to certify finally to their legality. We shall speak hereafter of these matters.

THE FIGURES OF MUNICIPAL INDEBTEDNESS

A great deal has been said in recent years about the extravagant borrowing of money by cities for public purposes. Reports from the New York financial market from 1919 to 1923 told of the sale of billions of dollars' worth of so-called "municipal bonds" and some

newspapers took these figures to mean that cities were rushing headlong into stupendous debt. The situation is undoubtedly a very serious one, but an examination of the facts shows that it is not as bad as it has been commonly reported to be. We give below a table showing the sales of municipal bonds from 1914 to 1923 inclusive as reported by *The Bond Buyer* of New York.[2] The figures show clearly that there was a great increase in the sale of "municipals" after the war, and that after a few years of heavy borrowing there came a recession of the wave.

We are concerned to know who borrowed this money, and also the extent to which the borrowing meant an increase in the debts of the larger cities which we have been studying. A "municipal bond" in the language of the money market is any bond issued by a state, a territory, a county, a city, a village, a town, or a school district, or by any other unit of local government whatsoever. Quite obviously the larger cities alone were not responsible for all the borrowing revealed by the table given below. In fact, the figures of total municipal bond sales tell us nothing of value about the increase in the debts of large cities, and even if we knew how many millions of dollars worth of bonds and notes were issued by these cities, this would still fail to tell us how much their real debt had increased. The main reasons for this are, first, that cities are constantly paying off old debts as well as contracting new ones, and second, that they are also steadily putting away money into sinking funds for the purpose of paying off debts. The assets of sinking funds may properly be deducted in determining the true indebtedness of a city.

[2] SALES OF MUNICIPAL BONDS, 1914–1923 (in millions of dollars)

Year	*Permanent or Long-term Borrowings.*	*Temporary or Short-term Borrowings,*	*Total Borrowings, (States, Counties, Cities, etc.)*
1914	445	286	731
1915	492	154	647
1916	497	292	789
1917	444	392	837
1918	262	473	735
1919	770	450	1220
1920	773	664	1437
1921	1383	762	2145
1922	1279	395	1675
1923	1111	437	1548

From *The Bond Buyer*, New York, issue of Jan. 5th, 1924.

In making its calculations upon the subject, the Bureau of the census takes these important factors into account. Its figures for the growth of the debts of 146 leading cities of over 30,000 population for which it has comparable data since 1903, are given in a footnote.[3] In order to understand this and other tables showing the indebtedness of American cities, it is necessary to keep in mind some definitions of everyday use among municipal financial officers.[4] The "funded" or "fixed" debt of a city is that part of its indebtedness which is represented by bonds, certificates of indebtedness, and other instruments which have or had when issued a fairly long term to run. The "floating" debt is represented by warrants, short-term certificates of indebtedness, unpaid judgments against the city, accounts payable, and other obligations which are not to be paid out of the current year's revenues. Anything that is to be paid out of current revenues during the year is not considered debt at all, although in the legal sense it may be a debt. The "gross" debt includes both the funded and the floating debt. The "net" debt is derived by substracting from the gross debt all moneys and other assets in the "sinking fund." This is a special fund into which the city puts moneys from taxes and other sources for the purpose of paying off its debts.

The table given in footnote 3, below, shows the indebtedness of only 146 out of 261 cities of over 30,000 population for the reason that the census bureau has completely comparable statistics as to only this number. The list of 146 includes, however, practically all of the largest cities in the land, and their net debt represents over nine-tenths of the total net debt of all cities of over 30,000 inhabitants. In 1903 these

[3] NET DEBT, TOTAL AND PER CAPITA, OF 146 LEADING CITIES, 1903–1922.

Year	*Total Net Debt*	*Per Capita Net Debt*
1922	$3,280,645,947	$97.57
1919	2,541,172,360	81.18
1917	2,445,851,564	80.75
1915	2,245,906,412	77.86
1913	1,950,006,813	69.28
1911	1,808,828,392	67.52
1909	1,537,099,399	61.21
1907	1,294,878,759	56.04
1905	1,119,345,755	50.94
1903	933,004,632	44.71

From *Financial Statistics of Cities*, 1922, p. 53.

[4] The definitions here given are substantially those used by the Bureau of the census. See *Financial Statistics of Cities*, 1922, pp. 50–51.

146 cities had a combined net debt of $993,004,632, which was equivalent to $44.71 per capita. In 1922 the same cities had a net debt of $3,280,645,947, or $97.57 per capita.[5] From 1917 to 1922 the net debts of these cities increased by approximately $835,000,000, or at the rate of $167,000,000 per year. The per capita debt in the same five years increased by about $17. In the twenty year period the total net debt more than trebled, and the per capita debt more than doubled. Because of the growth in population of the cities concerned, the per capita debt figures are far more important to us than the figures of total net debt.

It is possible to explain the increased per capita debt of cities in part on the basis of the decreased purchasing power of the dollar. The total net debt of the 146 cities increased nearly three-quarters of a billion dollars (737 millions) between 1919 and 1922, that is to say when prices were at the peak. The purchasing power of the money borrowed during these years probably was not much over 60 cents on the dollar when compared with pre-war years, say from 1903 to 1914. But the three-quarters of a billion spoken of above was only the *increase* in net debt during the years from 1919 to 1922. During the same years the cities actually borrowed a great deal more, perhaps from 300 to 400 million more, since in the same period these cities would have to pay off at least that amount of old debt. In other words, probably a billion or more of the debt of these cities outstanding in 1922 represents money borrowed when it had a low purchasing power. If we add to this the fact that from 1915 to 1917, and also from 1917 to 1919 when purchasing power was already on the decline and when cities were loyally holding back and borrowing as little as possible in order not to interfere with the Liberty loans, there was some additional turnover in debt, we should probably not be far from the truth in saying that half of the 1922 debt of these cities represented money borrowed at a time when the dollar was able to purchase relatively little as compared with earlier years. In other words the per capita money debt does not of itself demonstrate that cities are utterly extravagant in their building of roads, bridges, water supplies, and schools. The municipalities have simply had to use more money

[5] The census bureau figures are limited as far as possible to the strictly municipal or city debt, including the school debt. The local citizens may be responsible in addition for some county debt, some part of the debts of special districts in which the city is included, etc. The careful bond buyer takes into account all of the local debts when calculating the ability of the community to repay its borrowings.

to get what they formerly got for less, just as individuals have had to pay more for food, clothes, fuel, housing, and automobiles during the same period.

Of course, it is theoretically unwise of cities to borrow heavily just at the time when money has its lowest purchasing power, for with the subsequent drop in prices, cities will have to repay in better money what they borrowed when money had little value. We need to remember, however, that in the post-war years cities faced a condition and not a theory. During the years 1917 and 1918 the federal authorities had strongly urged them to refrain from diverting large amounts of either money or materials into works of local utility. The money and the materials were needed to carry on the war. During the war years, therefore, city pavements, schools and other facilities were inadequately maintained, and there was little new construction to take care of the needs of a greatly increased urban population. The municipalities thus fell far behind their normal programs of construction. With the cessation of hostilities, therefore, they found it necessary to fall to work again with a will. There were also the returned soldiers for whom employment had to be found, and in 1921 a condition of general unemployment arose in which cities were urged to push forward whatever work they needed in order to relieve the unemployed. We say nothing of the increased demands for pavements for automobiles, and schools and other works conforming to modern standards. Suffice it to say that the years 1919–1921, when all this work had to be done, also saw prices reach their highest peak. Since it was impossible to increase taxes rapidly enough to cover much of the expense of the new public works, cities were simply forced to borrow in large amounts. This explanation should not be taken, however, as a justification of all the borrowing that took place.

An unfortunate result of the increase in the debt of cities is the tendency of annual interest payments also to increase, that is to take more and more of the tax dollar. If a city borrows heavily without increasing its taxes proportionately, it will soon find that interest alone eats up a great deal of its current revenue. There are cities in this country which have to use more than 20 per cent of all revenue receipts just to meet interest payments. Among the cities of over 500,000 population, New York needed to use 17.3 cents out of every dollar of revenue for this purpose in 1922, while Chicago used only 5.3 cents and St. Louis only 2.7 cents. We have, indeed, in this ratio a good index to the financial policies of the various cities. The figures show,

however, that cities do not rely so much more on borrowing to-day than they did twenty years ago as the figures of per capita net debt might lead us to suppose. In 1903 all the 146 cities of over 30,000 inhabitants, referred to above, reported 8.3 cents out of every dollar spent for governmental cost payments as being used for interest, whereas in 1922 the same cities used 9.8 cents for this purpose. This shows an undesirable tendency, but it is not so marked as might have been expected. In dollars and cents the situation looks somewhat worse, for where $2.06 per capita sufficed to pay interest charges in the 146 cities in 1903, $5.79 were required in 1922, in which year all cities of over 30,000 paid out a total of $213,866,622 in interest.

It is of some importance to note that both total and per capita debts of cities tend to increase with the size of the city. In 1922 only three out of twelve cities of over 500,000 had per capita net debts of less than $100, and the per capita average for the group was $121.72. In the group of eleven cities having from 300,000 to 500,000 inhabitants, only five had per capita net debts of over $100, and the group average was $95.99. Only eight out of 52 cities having from 100,000 to 300,000 population had over $100 per capita net debt, and the group as a whole showed a per capita of $72.22. In the next group, cities of 50,000 to 100,000 population, the per capita net debt was $59.76, and in the last group, cities of 30,000 to 50,000, the per capita was $57.85. Whether it is increased population which causes the increase in debt we cannot positively say. The age of the city may have something to do with the situation, and there are other factors as well, some of which we note below.

In addition to size, and possibly age, there is reason to believe that location, economic and social conditions, and traditions have some effect upon the expansion of local public works and therefore control to some extent the debt policy of particular cities. Thus, with a few striking exceptions, we find that the cities of the South generally have smaller per capita debts than do their northern sisters. The laws and policies of the states also seem to be highly influential in determining the extent of local indebtedness. If we take, for example, the cities of 50,000 to 100,000 population, we observe that the per capita debts in cities of New York, New Jersey, Ohio, and California, are fairly high, whereas in the cities of Pennsylvania, Indiana, and Illinois, states which control their cities very largely by general municipal codes, and which have somewhat different conditions in other respects, the debts are relatively low. Aside from these influences we must give some

credit to the policy and administration of the city itself. This point we discuss hereafter.

THE PURPOSES OF MUNICIPAL DEBT

Where the city is not so unwise as to borrow for current expenses, and where it is not so unfortunate as to be compelled temporarily to do so, the *objects* upon which borrowed money is spent are the lands, buildings, pavements, water and sewer systems, machinery, and equipment of more or less durability which go to make up the permanent public facilities of the community. By the *purposes* for which debt is incurred we mean the municipal functions or activities upon which the money is spent. Without discussing the early ventures of cities in borrowing money to loan to railroads and other corporations, we may get some light upon the purposes of borrowing from the 1919 *Financial Statistics of Cities*. Of course the figures given are neither complete nor perfect, since they were not uniformly reported by all cities and are already somewhat out of date, but they are the best we have.

There is a common impression that municipal debts are increasing rapidly because of the great extension of the municipal ownership of public utilities. The 1919 figures for cities of over 30,000 population show that more than three and a half billions in gross debt were reported more or less fully by purpose. Of this amount two-thirds ($2,328,508,387) had been incurred for general governmental purposes, and one-third ($1,170,192,274) "for purposes of public service enterprises and investments." The latter amount was made up of the following items:

Water supply systems	$599,512,707
Electricity and gas	26,700,532
"All other"	543,979,035

Here we note that over half of the total amount was for supplying cities with water, and that only a little over 2 per cent was for electric light and gas plants. The cryptic term "all other" is explained in another part of the report, but it is interesting to note in passing that nearly three-fourths of the amount so designated was debt of the city of New York alone, $399,335,238. When analyzed into its component parts the half billion dollars of money borrowed for all other public service enterprises is found to have consisted of the following approximate items:

Rapid transit and subways, not including ordinary street railways,	over	$244,000,000,	mostly in New York and Boston
Harbors, wharves, docks, and ferries,	over	$171,000,000,	two-thirds in New York
Toll bridges,	over	$78,000,000,	almost entirely in New York
Railways other than street railways,	over	$19,000,000,	almost entirely a Cincinnati debt
Auditoriums, halls, memorials,	over	$7,400,000,	widely distributed
Markets,	over	$7,000,000,	widely distributed
Street railways,	over	$6,100,000,	in three cities
Conduits for wires, etc.	over	$6,000,000	
Canal,		$847,000,	Augusta, Georgia
Cemeteries,	over	$630,000,	widely distributed

These figures have been given in order to show definitely the purposes classed as "public service enterprises" for which cities have borrowed money. It will be noted that the items for ordinary street railways and for gas and electric light works are relatively small, and that there is no mention of telephone facilities in the list. The big items, aside from water supply, are subway and other rapid transit facilities in a few of the large cities where private enterprise hesitated, or was unable to finance them, harbor and dock facilities, which nearly all persons agree should be supported by the public, and toll bridges.

To sum up the situation, one-third of the municipal debt outstanding in 1919 for which the purposes were reported was classified under the head of "public service enterprises and investments." We have no comparable subsequent data covering borrowing by the cities of over 30,000, but we do have the figures for "outlays," *i. e.*, expenditures for permanent improvements, for 1922. In that year only one-fifth of the outlays (20.6 per cent) were for public service enterprises. If this year was typical of the post-war period, there has been an important drop in outlays for these purposes.[6]

As we turn from these public service or revenue-producing enterprises to the ordinary governmental purposes, we find some difficulty in getting precise figures. In issuing bonds cities do not always state definitely the purpose of the bonds, nor do their books always show what the borrowed money was expended for. For these reasons over $600,000,000 in debts could not be definitely allocated. As nearly as could be ascertained, however, the borrowings for various purposes, where the purpose was ascertainable, stood in the following order:

[6] *Financial Statistics of Cities*, 1922, p. 215.

	Amounts	*Per cent of all borrowings for governmental purposes reported by purpose*
1. Highway purposes such as pavements, bridges, abolition of grade crossings, etc.	$ 566,467,982	33.7
2. School buildings	442,024,561	26.3
3. Sewers and sewage disposal	245,777,204	14.6
4. Parks, gardens, playgrounds	176,820,895	10.5
5. General government buildings	109,191,957	6.5
6. Charities, hospitals, corrections	55,085,997	3.3
7. Police and fire departments	48,951,009	2.9
8. Libraries, art galleries, museums	34,974,299	2.1
Total reported by purpose	$1,679,293,904	99.9 per cent

It is unfortunate that we have not the figures of borrowing by purposes in detail for the years since 1919. We fall back once more upon the "outlays" reported for the year 1922, and find that of the total reported outlays for governmental purposes, highways took 38.2 per cent and schools took 31.8 per cent.[7] In both of these cases we apparently have notable increases. Some other functions barely held their own, while some dropped below their relative standings and percentages as shown in 1919. These figures tend to corroborate our everyday observation that schools and streets are receiving a larger share than formerly of the moneys available for permanent improvements.

SERIAL AND SINKING-FUND BONDS

If a city wishes to borrow $50,000 to erect a new police station or branch library, it may issue either serial bonds or so-called sinking-

[7] The 1922 outlays of all cities of over 30,000 population for governmental purposes (excluding public service enterprises) were distributed as follows:

1. Highways	$187,692,409	38.2 per cent
2. Schools	156,336,342	31.8 " "
3. Health and sanitation	82,249,475	16.7 " "
4. Recreation	26,715,566	5.4 " "
5. Police and fire	15,472,370	3.1 " "
6. Charities, hospitals, corrections	10,546,519	2.1 " "
7. General government buildings	5,367,489	1.0 " "
8. Libraries	4,106,914	0.8 " "
9. Miscellaneous	2,449,841	0.5 " "
	$490,936,925	

fund bonds, unless the law requires one or the other. These two types of bonds do not differ in general form or in the obligation upon the city to repay, but rather in the provisions made for maturity and in the method of making repayment of the principal. Serial bonds, as the term implies, are numbered serially and fall due, not all at once, but in a regular series throughout the maximum period of the loan. If the period of the loan is ten years, and fifty $1,000 bonds are issued, five of the bonds (Nos. 1, 2, 3, 4, and 5) may be scheduled to mature at the end of the first year of the loan, the next five (Nos. 6, 7, 8, 9, and 10) at the end of the second year, and so on until Nos. 46, 47, 48, 49, and 50, mature at the end of the tenth year. As the bonds mature they are "taken up" by the city, which simply means that the city repays the money borrowed thereon, receives the bonds in return, and cancels or destroys them. Thus the amount of debt outstanding is reduced from year to year. Our illustration is that of a perfectly regular serial issue. On the other hand if sinking-fund or "term" bonds were issued, the entire group of bonds would remain outstanding until the end of the tenth year and would then mature all at once.

The differences described in the maturity of the bonds necessitates certain differences in the methods of providing for repayment. Since some of the serial bonds fall due each year, a tax will have to be levied annually to pay off the bonds falling due, and also to pay the interest on the bonds still outstanding. In the first year according to our illustration this would mean interest on the entire $50,000, plus $5,000 to repay the principal of the five bonds falling due that year. In the second year, interest would have to be paid on $45,000, and five more $1,000 bonds would have to be paid off. Thus in the case given the payment for interest each year would be a diminishing one, and the total annual payment would also steadily decrease. At the same time there is no reason why the number of bonds to be paid off each year should not be made a variable one. More bonds could be paid off one year than another, and for some year when other obligations of large amount are to fall due it might be prearranged that none of this particular issue should be paid off. The system is a flexible one, but it is important to adhere to the fundamental principle that no more bonds shall be scheduled to fall due in any year than can be taken care of from current revenues.

Under the sinking-fund method it is also necessary to make provision for annual payments of interest to the bond-holders, but these payments instead of decreasing from year to year would continue at

the same amount throughout the ten year period assumed, *i. e.*, interest each year at the agreed rate on the entire $50,000 borrowed. No principal would be paid off from year to year, however. Instead some money, presumably raised by taxation, would or should be put aside each year into a fund held by the city and called a sinking fund. The moneys in this fund would then be invested and reinvested from time to time in such safe securities as United States bonds, and state, county, and city bonds. As these bonds earned interest it would be regularly added to the sinking fund. Thus as the years went by the fund would grow through the addition of the annual contributions and the accumulation of interest until, at the end of the ten years the fund would presumably contain $50,000, which would be available for paying off the original loan.

We present herewith two tables which indicate roughly how the two plans would operate at their best.[8] In the illustrations given the cost

[8] SERIAL AND SINKING FUND PLANS OF REPAYING LOANS

Note: In each case $50,000 is supposed to be borrowed on January 1, 1920, at 4 per cent interest, payable annually on January 1st. The loans are to run ten years. We assume that there are no losses or difficulties in making investments, and that the sinking fund draws exactly 4 per cent interest, all interest being promptly invested. In each case the city pays out $61,000, the sum of columns I and II.

Sinking Fund Plan

Jan. 1, 1920, city borrows $50,000 for ten years at 4 per cent

	I	II	III	IV
	City pays interest to bondholders as follows:	*City puts into sinking fund sums as follows which are promptly invested:*	*Sinking fund has earned interest at 4 per cent as follows:*	*Total amount then in sinking fund:*
Jan. 1, 1921	$2,000	$5,000	——	$5,000
Jan. 1, 1922	$2,000	$4,800	$200	$10,000
Jan. 1, 1923	$2,000	$4,600	$400	$15,000
Jan. 1, 1924	$2,000	$4,400	$600	$20,000
Jan. 1, 1925	$2,000	$4,200	$800	$25,000
Jan. 1, 1926	$2,000	$4,000	$1,000	$30,000
Jan. 1, 1927	$2,000	$3,800	$1,200	$35,000
Jan. 1, 1928	$2,000	$3,600	$1,400	$40,000
Jan. 1, 1929	$2,000	$3,400	$1,600	$45,000
Jan. 1, 1930	$2,000	$3,200	$1,800	$50,000
Totals,	$20,000	$41,000	$9,000	

Continued on next page

would be the same under the two plans, and the distribution of payments throughout the ten year period would also be the same. Under ideal conditions the sinking-fund system may be as good as, or even better than the serial plan. For example, if a city could borrow money at 3 per cent net, and could itself find perfectly safe 4 per cent and 5 per cent investments at just the time when it needed them and in just the right amounts, it might actually earn money on its sinking fund. This is to assume, however, that the officers in charge of investing the sinking funds are perfectly wise, honest, and diligent, and also to assume a most surprising situation in the money market. In actual practice there are many chances for mistakes and losses under the sinking-fund system, and there have also been cases of dishonesty. As a rule the sinking fund earns a lower net rate of interest than the city itself has to pay. Sums of various sizes lie in the sinking fund for weeks and even months without being invested, with resultant loss of interest. In rare cases the investments prove to be bad, and then more loss results. In some places the city's sinking funds have been treated as a sort of spoils to be invested by or deposited with friendly banks, while in many instances there have been miscalculations which have resulted in leaving the sinking fund short of the sum needed at the end of the loan period to retire the bonds. In other cases the city fathers have diverted the sinking fund to other uses, and have even invested the money therein in the city's own bonds. In the latter case when one group of bonds falls due all the city has on hand is a different

Serial Bond Plan

Jan. 1, 1920, city borrows $50,000 for ten years at 4 per cent.

	I	II	V	VI
	City pays interest to bondholders as follows:	*City pays off bonds as follows:*	*Total amount of annual payments:*	*City still owes the bondholders:*
Jan. 1, 1921	$2,000	$5,000	$7,000	$45,000
Jan. 1, 1922	$1,800	$5,000	$6,800	$40,000
Jan. 1, 1923	$1,600	$5,000	$6,600	$35,000
Jan. 1, 1924	$1,400	$5,000	$6,400	$30,000
Jan. 1, 1925	$1,200	$5,000	$6,200	$25,000
Jan. 1, 1926	$1,000	$5,000	$6,000	$20,000
Jan. 1, 1927	$800	$5,000	$5,800	$15,000
Jan. 1, 1928	$600	$5,000	$5,600	$10,000
Jan. 1, 1929	$400	$5,000	$5,400	$5,000
Jan. 1, 1930	$200	$5,000	$5,200	——
	$11,000	$50,000	$61,000	

batch of its own bonds with which to take up and pay off those which have fallen due.

Taking all the factors into account there is under ordinary conditions a definite advantage for cities in the serial plan of repayment. Under this system no sinking fund is needed, and no board of sinking-fund commissioners. Large sums of money are not left on hand to tempt the commissioners to essay new flights into high finance. The moneys taken in during any year for bond repayment are paid out promptly to the bondholders as principal and as interest. There is almost no chance of loss, and there is a certainty about the repayment which should be very encouraging to both the bondholders and the taxpayers. The system is flexible, so that the heaviest payments can be put early or late in the loan period as need may require. Finally, because some of the bonds fall due in one, some in two, some in three years, and so on, the market for the bonds is somewhat widened, since many corporations and other persons who desire short term loans will find municipal serials convenient. These are some of the considerations which have led in recent years toward a general adoption of the serial bond plan for municipalities.

DEBT LIMITS AND DEBT CONTROL

Every state has an interest in the financial stability of the cities and other local units within its boundaries. If even a few cities within the state become financially embarrassed the fact will soon become noised abroad, with the result that the state itself and all of its local subdivisions will find it hard to borrow money at reasonable interest rates. The suspicion will arise that the state has low standards of financial integrity, or that it has poor debt laws and poor administration. The possible effect upon business within the state is also not to be ignored. Beyond these considerations lies the desire to protect taxpayers and bond buyers. In some of the smaller and less populous areas in particular there is not likely to be an excess of financial wisdom. Debts and taxes may be raised to a point where business is injuriously affected and the taxpayers must carry an excessive burden. Investors, too, need some protection.

For the reasons given the states have all adopted laws, either special or general, for checking the borrowing activities of local authorities.[9] In this legislation there is very little uniformity despite the

[9] See Lancaster, *State Supervision of Municipal Indebtedness*, 1923.

fact that the states have to some extent copied from each other. The restrictions relate to the purposes, the amount, and the repayment of debts, as well as to certain allied problems. As a general rule the local authorities may borrow only for those purposes which have been approved in advance by the legislature, but even the legislature cannot authorize borrowing for purposes forbidden by the state constitution, nor for so-called "private purposes" where the loan must be repaid out of taxes.[10]

Some of the provisions prohibiting borrowing by local governments for certain purposes and authorizing it for others are to be found embedded in the state constitutions, while others are merely statutory and are therefore subject to change by the legislature. In like manner the laws limiting the amount of local borrowing may be either a part of the constitution or simply legislative enactments. All told, twenty-six states have constitutional provisions restricting the amount of local indebtedness, among the more populous of which are Illinois, Indiana, Missouri, New York, Pennsylvania, and Wisconsin, whose limits vary from 2 to 10 per cent of the assessed value of the locally taxable property.

These constitutional debt limits are a warning to local authorities, but they are made effective primarily through making the bond buyer beware. Bonds issued in excess of the legal limit are simply invalid, and therefore the wise buyer will look up the law and the facts relative to bonds offered for sale. Constitutional debt limits are matters of public record, and it is possible by searching to find out also the assessed valuation and the amount of the outstanding debt of any city. Of course there are methods of evasion, and there are other adverse criticisms which may properly be directed at constitutional debt limits, but whatever else may be said it cannot be denied that they seem to be to some extent effective. If the purpose is to keep down municipal indebtedness without regard to other considerations, debt limits in the constitution have some justification.

Statutory debt limits, on the other hand, have not usually been so successful, primarily because they have not been so rigid. What the legislature can do it can also undo, and in the case of debt limits it is constantly being importuned to permit exceptions to be made. "Debt," as we have said before, is a very broad term, but all the true debts of a city are never added up to determine whether a city has reached its debt limit. It is for the legislature to say what items shall

[10] See pp. 405–411 above.

be included. The debt limit laws almost everywhere refer only to "bonded" or "funded" debt, thus ignoring all current bills, judgments against the city, notes covering short-time loans in anticipation of taxes, etc., which are to be paid out of the current year's revenues. From the total of the funded debt also it has become customary to deduct all bonds issued for the acquisition or construction of self-supporting public utilities such as water supplies and gas and electric light plants, and in some states also all bonds which are to be paid not out of the general revenues of the city but from special assessments or some other special revenues which are pledged to be used for the purpose. These items are said to be "outside the debt limit," by which is meant that they need not be considered as part of the debt which by law must remain within a certain limit. In addition to these important exclusions a subtraction is usually made of the sums held in sinking funds for the purpose of debt redemption.[11] It will be seen, therefore, that where the constitution itself does not define and limit the debt of a city, the legislature retains an extensive power to do so, and that when it is subjected to the pressure of a series of local interests which desire that this and that proposed debt be placed "outside the debt limit," it is very likely to yield to their demands. A study made of the situation in Minnesota, where there is no constitutional debt limit for cities, shows how a nominal 10 per cent debt limit was made meaningless as far as the city of Minneapolis is concerned by a series of these exemption acts.[12] Similar situations could undoubtedly be found in many places.

[11] A calculation is usually made somewhat as follows:

I. Assessed valuation of city			$830,900,620
II. Permissible net debt under 7 per cent limit			$58,163,043
III. Outstanding debts and deductions:			
1. Total funded debt		$44,369,240	
2. (a) Water debt	$6,400,360		
(b) Other self-supporting debt	850,000		
(c) Amounts in sinking fund for redemption of general debt	$2,340,960		
Total deductions		$9,591,320	
3. Net debt, derived by subtracting No. 2, above, from No. 1,			$34,777,920
IV. Margin for future borrowing, derived by deducting the actual net debt from the permissible net debt			$23,385,123

[12] Welles Gray, *Municipal Indebtedness in Minnesota* (Master of Arts thesis), University of Minnesota, 1924 (not published).

Both constitutional and statutory debt limits are open to other objections which must be briefly stated. It is impossible to determine the needs of various cities in advance, and it is undesirable to do so by a rigid uniform rule. One city's needs and financial abilities are different from those of another. So, also, any city's ability to pay off its debts, and its requirements in the way of public improvements, are subject to change from time to time. To say in the constitution that 5 per cent or 10 per cent of a city's "assessed valuation" shall be the limit of debt that city shall incur is to say something which is obviously arbitrary. What is the basis of calculation, what necessary improvements are had in mind, and what tax-paying abilities are assumed, when one constitution fixes the limit at 2 per cent and another sets it at 10 per cent or more? Even the term "assessed valuation" has a variable meaning, since one state may attempt a 100 per cent valuation while another aims at a 50 per cent assessment, and since within the same state there may be important variations in local assessments. In fact a general percentage limitation, itself difficult to change, takes no account of the ups and downs of business prosperity and tax-paying ability. It may encourage undue borrowing at a time when the people could afford to pay heavier taxes instead, and may be unduly restrictive at times when taxes should be lowered and public improvements be provided out of borrowed funds.[13]

These defects in the principle of percentage limitations are supplemented by other defects in practice. They are no less irritating to state legislators than they are to the cities themselves. As a result various methods have been found of circumventing them. Where the constitution itself does not define "municipal debt" the legislature does so, as we have said above, by putting some debts outside the debt limit. Where this type of evasion seems undesirable, it may still be possible to increase the debt of a particular community by creating separate districts or municipal corporations over the same area for different purposes. Thus if a city has about reached its debt limit, a port district or a park or drainage district or some other type of local unit may be incorporated in the same place with separate powers of borrowing. In this way the debt in a particular locality may be made greatly to exceed the debt of the city alone. The burden upon the taxpayer is just the same as if the city were responsible for the entire

[13] For criticisms of debt limits see Secrist, *An Economic Analysis of the Constitutional Restrictions upon Public Indebtedness*, especially pp. 84–126; Lancaster, *State Supervision of Municipal Indebtedness*, pp. 31–33, and other passages.

debt, but the scheme of local government is made much more complicated. Indiana, with a 2 per cent constitutional limitation upon local debts, has had much experience with this type of evasion. Short-term borrowing, if it is outside the debt limit, may also be resorted to, despite its obvious disadvantages. These are but illustrations of the ways in which debt limits can be and are being legally evaded. At times they are even evaded illegally, since there is no adequate enforcing machinery. As a rule even an illegal debt will be paid unless either some taxpayer brings action at his own expense to prevent it, or, upon a change in the city administration, the incoming officials refuse to recognize some part of the debts occasioned by the acts of their predecessors. These are, of course, very inadequate, uncertain, and undesirable ways of enforcing debt limits.

In short we have here, as in a number of other cases, good evidence of the ineffectiveness usually inherent in attempts at legislative or constitutional control over situations which are complex, various, and constantly changing. It is not enough to make a law upon the subject and then to hope that the law will enforce itself while allowing for all the exceptions which experience and reason prove to be necessary. What is needed, if the problem is of sufficient importance, is to have some officer or bureau giving constant and undivided attention to it. In other words here is an excellent opportunity for devolution of power by the legislature upon some administrative agency which can bring expert knowledge to the solution of the ever-changing problems which arise. Some states are already working along this line, notably Massachusetts and New Jersey. Indiana has adopted a different plan, of which we also speak hereafter. Perhaps before these words reach the printed page other states will have followed suit.

A CONSTRUCTIVE STATE POLICY RELATIVE TO LOCAL DEBTS

Since about 1913, when Massachusetts began its pioneer work in the improvement of local debt laws, a great deal has been done to improve legislation upon the subject in a number of states. The problem stands out to-day as one in which economic considerations should be given first place, but not to the complete exclusion of political factors. Present thought upon the subject would suggest that the average state would do well to adopt substantially the following principles as the basis of its local debt law.

1. **Registration of debt information.** Any sound legislative or administrative policy must grow out of, and be deep-rooted in the facts to which it is to apply. The first requisite, therefore, is to get, to continue to get, and to keep always up-to-date the facts about municipal indebtedness in the state. What a few states are already doing, every state needs to do. The facts required relate to the population, boundaries, assessed valuation, and government of the local units, to the overlapping of areas, to the various issues of bonds outstanding, the form and amount thereof, the time when due, the method of repayment provided for, and the rate of interest, and to the provisions for repayment already made, whether by accumulations in sinking funds or by taxes levied. As to the past and present such facts can be obtained only by a complete survey. Facts as to future issues can be obtained without great difficulty if it is made a prerequisite to the valid issuance thereof that the facts as to the issue be sent to some central registration office. Bond buyers and their attorneys will soon learn to demand to see proof of the filing of such information.

2. **Codification of bond laws.** In a number of the states the laws relative to municipal debt form an almost inexplicable maze. There will be found general laws and special laws, new laws and old laws, statute law and common law, all upon the same subject. The provisions of the constitution, and those in special charters, will only add to the confusion. As we have said before, this branch of law has become so complicated that only a few specialists in the field can really give reliable counsel to bond buyers. Perhaps the law can never be made so simple that every layman will understand it, but it is possible to consolidate all the law upon the subject into one act, to simplify the provisions thereof, and to standardize the procedure for the issuance of bonds, and then to repeal all the old laws upon the subject. So far as possible, too, the law should deal with general principles only, leaving to the state bureau of municipal finance the duty of promulgating rules for the enforcement of the law. Subsequent bond legislation should then be enacted in all cases as amendments of the general bond code, and revised pamphlet editions should be issued from time to time, including both the law and the administrative regulations thereunder. In this way could be avoided many present difficulties.

3. **A state supervisory authority.** The new legislation should provide for the establishment of a bureau or office in the state government for the handling of the state's functions in connection with local debt. This bureau might well be called the bureau of municipal finance.

The director thereof should be a man skilled in financial administration, and should be given long tenure and an adequate salary. His first function should be that of fact-gathering, of registering bond issues, and of keeping himself fully informed about the operations of the local debt laws both in his own state and elsewhere. His should be the central bureau of information upon this subject. His other functions we note below.

4. **Validation and legal aid.** Either the head of the bureau, or some well-paid officer in it, or an assistant attorney-general, should be especially charged with the duty of examining every proposed local bond issue in advance, and of rendering an opinion on the legality of the issue from every point of view before sale. Such a service would prove a great boon to the smaller places which cannot afford to hire the best legal talent for this purpose. The legal aid thus rendered might, in fact, be carried a point farther by providing that the said attorney's opinion approving a bond issue should validate the bonds unless within thirty days or some such period after its rendition, some city official or local taxpayer should bring suit in an appropriate court to contest the issue. A speedy and simplified court procedure for such cases could easily be designed. If the bond attorney's opinion went uncontested in the time given, or if the appropriate court sustained his finding, the bonds should be considered valid and no further test thereof should be permitted except, perhaps, for fraud, forgery, or unconstitutionality. For the smaller cities the legal aid thus rendered, as we said above, would mean a considerable saving, but still more might be expected from state validation. If there were no possible doubt as to the validity of the bonds of small districts, large buyers of municipals might consent to take those of small units and might even take them at a fairly low rate of interest. In the long run cities and other local units have little or nothing to gain, and perhaps something to lose, through the issue of bonds of doubtful legality.

5. **Referendum or appeal.** In the writer's opinion, already expressed, it should be the aim of the state to establish in each locality as rapidly as possible a truly responsible, representative government. If the people's representatives in the city council are really to be held responsible for the local administration, they should have power to initiate and to carry through ordinances for bond issues just as for other purposes. This is already the case in some large cities but is less commonly the case in smaller places. In fact some constitutional provisions and a considerable number of the state laws relative to municipal bonding

require the approval of bond issues by the voters in every case. In several states only taxpayers may vote on such questions. Here we have one of the most widespread uses of the referendum in the compulsory form. While we have had no exhaustive studies of popular votes on bond issues, observation would make it appear that the results have been somewhat as follows: First. The council, being merely a proposing body, has felt less responsibility for bond issues than is desirable, and has submitted some bond proposals to a popular vote of the wisdom of which it was not itself convinced. Second. The publicity relative to routine bond issues has been inadequate with the result that voters have not been sufficiently informed to vote intelligently. In many cases the vote has been unduly light, and thereby some advantage has been given to those opposing the bond issue. Third. Some bond proposals have been rejected by the voters, and in this sense the referendum has operated conservatively. Fourth. On the whole, however, the desire to have improvements, coupled with the desire to shift the cost to the future and to avoid present high tax rates, has overcome in most cases the fear that the city will some day have too large a debt. Probably more bond issues have been approved, therefore, than should have been, since under the circumstances municipal councilmen have felt free to propose bond issues instead of passing unpopular taxes as a means of financing desired improvements.

To make the council really responsible for bond issues, it will be necessary to give it commensurate authority. It should be permitted to borrow money on the bonds of the city without being able to shift the decision to the voters, and without being compelled in each case to obtain their approval. Nevertheless, a popular check may in some cases prove to be a desirable thing, and for that reason it would probably be well to reserve to the voters the power of protest, *i. e.*, the power to demand a referendum on the bond issue in case some substantial percentage of them insisted upon it. The percentage required probably should not be less than 5 nor more than 15.

In the state of Indiana a law has been in force for several years whereby the local council may issue bonds, but any ten taxpayers may appeal from their decision to the State board of tax commissioners.[14] The state board must then hold a public hearing upon the question somewhere within the county in which the city concerned is located, and thereafter it must give a decision, which shall be final, either ap-

[14] *Laws of Indiana*, 1921, ch. 222; *Year Book* of the State of Indiana, 1921, pp. 893–894; *ibid.*, 1922, pp. 1084–1086.

proving or rejecting the issue. Here we have the first general attempt in the United States to substitute an appeal to a state board for a local referendum on a question of this nature. "The Indiana plan" of debt control is but one of many evidences of a centralizing tendency. There are foreign precedents for this plan in the powers of a French prefect over communal budgets within his district, and also in the authority of certain central boards in England to approve or reject borrowing schemes of English municipalities. In practice the Indiana plan has proved to be simple and fairly inexpensive in operation, and it appears also to have been effective in reducing borrowing. Many bond issues proposed by local authorities have been rejected by the state board, but we do not know how many of them would have passed through the local councils in case no outside checking power had existed, nor do we know whether rejection was wise in each case.

It is open to some question, also, whether the Indiana plan will operate effectively and impartially in all cases, whether so serious an invasion of the powers of local self-government is needed to accomplish the desired result, and whether it is a desirable invasion even if it does succeed in reducing borrowing. The standards of administration in our American states are not yet high enough to warrant our placing complete confidence in the ability of every state to carry out the Indiana plan with judicial care and without political bias. Furthermore, while it is important to keep down the debts of our cities, there are more important considerations, and the promotion of local responsibility for local affairs is one of these. It does not conduce to the dignity or the efficiency of the local government to enthrone the taxpayer so that any ten of him can hail the city authorities before an outside tribunal, and meanwhile delay the public business, in order to have that tribunal decide not a question of law or of justice but what is fundamentally a question of local economic and political policy. If the local community favors and the state board disfavors municipal ownership of markets or the establishment of certain new facilities in schools or in parks, though the law authorizes cities to undertake such ventures, the state board, an administrative body, may reject the proposed bond issue therefor and thus defeat the policy. Local democracies make errors of judgment, no doubt, and small communities probably make relatively more of them than large. They need to be advised and warned by central authorities of wider knowledge and experience, but as we have said before it is open to serious question whether it is wise to set over them a somewhat irresponsible

central authority supposed to correct their errors, but which in so doing takes from them the responsibility for conducting their own affairs.

6. **Form and repayment of bonds.** One important economic fact that must constantly be driven home to citizens and officials is that borrowings must be repaid. This is in no sense a political question with reference to which the locality should be allowed to enforce its own opinion. Furthermore, few things will do so much to discourage excessive bond issues as the legal requirement, adequately enforced, that money be set aside in substantial sums from the very beginning to repay whatever loans are contracted. An issue of bonds will then immediately cause an increase in the tax rate, and it might even be desirable to have tax bills so printed as to show this fact to the taxpayer.

It is now generally agreed that the serial method is the best for the purpose, but not every issue that is designated as serial will accomplish the result. If the bonds issued are so arranged that none will fall due in the first five or ten years, the taxpayers will be deceived as to the actual burden. Furthermore, the improvement acquired, unless it be a piece of land, may have depreciated very much before the people have to begin to pay for it. This is not desirable. Most improvements have their highest value and the lowest cost of maintenance when new, and it is, therefore, at that time that the heaviest repayments should be made if possible. But interest payments are also heaviest at the outset under the serial plan, and decline steadily as the bonds are paid off. Perhaps the best plan in most cases is to require the bonds to be paid off in equal instalments each year, beginning with the first year after the money is borrowed. With interest payments starting at their highest the total burden will then be heaviest at the start, and will gradually taper off until the end of the loan period.

How to compel cities to make regular provision for the payment of interest and the repayment of principal out of current revenues is no easy question to answer. The New Jersey plan requires the submission of local budgets to the state commissioner of municipal accounts, who has power to enforce the inclusion therein of all items of appropriation needed to provide adequately for sinking fund, serial bond, and interest payments. Since there is here no question of policy, there is not the same objection to this power being vested in a state department as there would be to the Indiana plan of debt control.

7. **Refunding and funding bonds.** In any case the state law

should forbid any municipality from borrowing more money to pay off old debts. This practice, called "refunding," which was generally tolerated in the past, has resulted in the indefinite postponement of the repayment of bonds. The annual interest payments go steadily on, and in the course of time may amount to much more than the original debt.

Cities also indulge very commonly in the practice of permitting bills and judgments to accumulate, without making an effort to pay them out of revenues immediately, and they also borrow money in large amounts for periods of from a few months to a year to get funds for use before the taxes for the year are collected. Frequently these floating debts and short time loans reach such large amounts that they cannot be taken care of from annual revenues. Bonds must then be issued to raise the required money. In this way current expenses are sometimes "funded," i. e., transmuted into long-term bonds, an unfortunate financial practice. The law should forbid such funding practices, and should also forbid all long-time borrowing for current expenses. The state bureau of municipal finance might be given power to approve some minor exceptions to this rule in case of actual emergency.

8. **The term for which bonds should run.** When money is borrowed for any purpose, it should be for a period somewhat shorter than the expected life of the improvement to be provided. This is a principle which some states, notably Massachusetts, New Jersey, North Carolina, and several others have tried to embody in the law by setting different maximum periods for loans for different purposes. Thus loans for providing macadam pavements might be permitted to run for not over five years, for asphalt pavements not over ten years, and so on.[15] For the acquisition of land, which will in most cities probably last unimpaired in value for as long a time as man can calculate, the law might permit the loan to run for forty or fifty years. It is probably wise for the state to fix certain maximum periods in the law, but it would be desirable also to permit the state bureau of municipal finance to reduce these periods when, as a matter of fact, it was found that the legal maximum periods were too long.

[15] The need of having some such time limitation on bonds which are to pay for perishable improvements was well illustrated in a recent survey of municipal finances in New York state where one small municipality was still in debt for three successive improvements to some of its streets. The oldest debt was for the original paving, the next was for repaving after the first pavement had worn out, and the third was for repaving over the repaving. *Report* of the Special joint committee on taxation and retrenchment, Retrenchment section, 1920, pp. 80–81. This report contains other interesting illustrations of unwise borrowing practices.

9. **Education.** An important function of the state bureau should be that of promoting the education of local officers and voters in all matters relating to municipal finance. It is not enough to print an annual report with many pages of difficult statistics. Such compilations serve the specialist, but the official and the taxpayer need leaflets, pamphlets, radio talks, the organization of short courses, and a regular information service to keep them informed about local taxes and debts. Such a conscious educational effort would round out the work of the bureau and make it more of a force in the communities.

10. **Debt limits.** A state which provides for local debt control in the manner herein set forth will hardly need to write a local debt limit into either the constitution or the statutes. There would not be much objection to having one, however, provided it were made high enough or flexible enough to provide for the varying needs of different cities.

A SOUND MUNICIPAL DEBT POLICY

However much the state may do to promote intelligent borrowing practices, each city needs also its own policy, for the city itself is primarily responsible for its local finances, and many questions must be left to its decision. It is needless to say, perhaps, that the first principle in its policy should be that of conforming absolutely to the state laws, both in letter and in spirit. Beyond this it would do well to give some recognition to the following points:

Every city should rely mainly upon current revenues and should borrow as little as possible. Specifically, it should not ordinarily borrow for mere alterations and replacements of existing improvements, nor even, if possible to avoid it, for recurrent outlays. A small city which builds only one new school every ten or fifteen years is fully justified in borrowing for the purpose, but a large and prosperous city which builds one or more every year had better finance much of its school building program out of taxation. The same rule applies also to paving, curbing, and the laying of sewer and water mains in so far as the burden of these improvements falls upon the city treasury and is not met out of special assessments. In other words, it is generally agreed that a city should pay as it goes to as great an extent as possible.

It is appropriate to say a word here about the so-called "pay-as-you-go" policy. Almost all cities spend more money on permanent improvements than they raise by borrowing money. That is to say,

it is a common policy to take some money for improvements directly out of taxation and other current revenues. In 1922 in all cities of over 30,000 inhabitants, revenue receipts exceeded all expenses and interest by $402,377,905. In the same year a total of $617,935,628 was put into "outlays," *i. e.*, was expended for the construction or acquisition of permanent facilities of one kind or another. In other words, had all of the excess revenues been put into outlays, it would have been necessary to borrow only about $215,000,000, or approximately one-third of the amount laid out. We know, as a matter of fact, that cities do invest much of their current revenues in permanent improvements. This tendency, which has continued for a number of years, was noted in the census bureau's *Financial Statistics of Cities* for 1919 where we read that "the majority of the cities are increasing the value of their permanent properties and public improvements faster than they are increasing their debts." This is sound policy.

It is unfortunately true, however, that a small number of cities do the very opposite at times, that is to say, they do not raise enough from their revenue sources from year to year even to meet current expenses and interest. They are compelled in some cases to borrow money to meet running expenses, the very worst sort of financial management. In 1922 only six cities out of the 261 of over 30,000 population seem to have followed this mistaken policy. All the others, 255 in number, had revenue receipts exceeding expenses and interest. The average excess of revenues over expenses and interest was $10.39 per capita, or 20 per cent of the revenues raised. Among the large cities the following had excess receipts of over $10 per capita: New York, $12.63; Chicago, $14.28; Detroit, $15.43; Cleveland, $14.63; St. Louis, $10.83; Boston, $15.03; Los Angeles, $31.51; Pittsburgh, $11.58; San Francisco, $13.17; Milwaukee, $18.43; Washington, D. C., $15.24; Cincinnati, $14.97; Minneapolis, $12.47; Indianapolis, $14.36; and Seattle $13.44. Indeed, in three of the ten cities which were then credited with more than 500,000 population the revenue receipts exceeded all governmental cost payments including outlays on permanent improvements. In 1919, when cities were still practicing war-time economy in outlays, seven of the ten largest cities had revenue receipts in excess of all governmental cost payments including outlays. To be sure these figures are somewhat misleading since they do not tell us just how much of the excess revenues actually were expended on outlays. Much, perhaps most, of the excess must be used for paying off bonds which have fallen due. In spite of this

fact, however, we have in the figures presented fairly good evidence that cities are not borrowing all the money they spend for permanent improvements.

The so-called "pay-as-you-go" policy requires something more than this, however. In its extreme and perhaps its only true sense, the term seems to mean the policy of paying everything,—expenses, interest, outlays, and old debts when due,—out of current revenues. In this sense no American city of over 30,000 population, unless it be Washington, D. C., is now upon a pay-as-you-go basis. New York attempted to enforce the policy for a few years but has given it up. The self-governing and self-financing cities all borrow to some extent. They all have debts. In 1922 only 21 cities of over 30,000 population had net debts of less than a million dollars. Of these Washington is the largest, and it had the smallest net debt of all, $156,234. Of the other 20 only one, which is really a town, has over 50,000 inhabitants, and 19 have less than that number. New York alone had a net debt of over a billion dollars, a larger debt than that of the national government prior to our entering the World War. By way of contrast the net debt of the city of Chicago was only $131,340,909, and that of St. Louis was only $14,183,448. The New York per capita net debt was $182.72; that of Chicago was $46.35; and that of St. Louis was only $17.99.

The argument for the pay-as-you-go plan is based partly on considerations of economy and partly on somewhat broader social grounds.[16] Pay-as-you-go is said to be cheaper because it saves the people from the payment of interest. In the course of fifteen or twenty years the interest payments, even if at a low rate, will amount to as much as the principal. A school may cost the people $100,000 in principal or outlay, and another $100,000 in interest. This argument ignores to some extent one of the economic grounds upon which interest is sometimes justified, namely, that a dollar which can be spent now in satisfying some immediate want is worth fully as much as $1.05 or $1.06 a year hence. We are impatient and cannot wait to have our wants satisfied, and are willing to pay more at some future date for the purpose of stilling our wants now. For this reason men borrow money to buy houses and to buy automobiles and even to buy jewelry.

This brings us to a second consideration. When we borrow we do not always fully calculate either the present value of the thing we

[16] See the interesting controversy on the subject in the *National Municipal Review*, vol. XIII (1924).

buy or our future ability to repay. If we had to pay cash we would probably buy less now, but we would buy more wisely. Then, too, we would be better off in the future since we would have no debts hanging over us. Cities like men are likely to be too hopeful about their future wealth, and since it is usually easy for them to borrow money, they are likely to get badly into debt. Hence, it is argued, a city will not only save the payment of interest, but it will also be saved some foolish expenditures if it pays for what it needs as it goes along. Current expenditures from tax receipts are watched somewhat more closely than are funds derived from bonds.

It is also argued, more in general, that it is unjust to burden future taxpayers to pay for debts incurred to provide conveniences for the present. Since it is the present generation which both makes the decision to have the improvement, and which reaps most if not all of the benefit therefrom, it is urged that the present should also pay the bill.

The counter-argument, aside from the economic consideration of the present and the future values of money and goods, is very briefly (a) that it would require an excessively high tax rate now to shift over to the pay-as-you-go plan, (b) that the future will get a great deal of benefit from the lands and buildings being provided for public use to-day, and (c) that our cities are growing so rapidly that it is unfair to burden the small population of to-day with the expense of improving the entire city for the much larger and wealthier city of to-morrow. There can be no doubt that an immediate and complete change to the pay-as-you-go plan would mean an increase in the tax rate of from 10 per cent to possibly 30 per cent or more, depending upon the present indebtedness of the city and its need for public improvements, or else it would necessitate the drastic reduction of the programme of improvements.

A wise compromise plan between extreme pay-as-you-go and the policy of borrowing for all improvements can undoubtedly be worked out. It should include among its elements the determination to borrow only for really new and somewhat unusual improvements and the acquisition of land, to pay off all loans as they fall due, and to arrange that they shall be all fully repaid well within the life of the improvement acquired. Briefly summarized such a plan would use borrowing much less and rely upon current revenues much more for the improvement of the city.

If the course of economic events could be predicted with accuracy, a city might also develop a flexible policy suited to the times. Thus

when business is flourishing, labor is well employed, prices are relatively high, and interest rates are also well up, a city should rely less upon borrowing than usual. At such times the stream of income is likely to run full, and it will suffer less than usual from public taxation even if the taxes be fairly large. When business depression comes somewhat later, prices usually drop, laborers are laid off, and capitalists seek safe investments for their funds in municipal and other government bonds. At such a time, if a city has been wise enough to keep down its debt in the immediate past, it can afford to borrow money at low rates, to hire many laborers who would otherwise be unemployed, to buy materials at low prices, and to proceed to the construction of new improvements at the same time that it is reducing taxes. With money of high purchasing power, a city can at such times get more than usual for its outlay, and it can repay the loans from taxes a few years later when business has once more recovered its normal stride. It is, of course, Utopian to talk of such careful planning by the average city, yet something of the kind may be possible when our business forecasters have developed a more perfect technique.

In any case a city should plan its bond programme for some years in advance. It is possible now to predict with some degree of accuracy the growth of most cities over five and ten year periods, and if a city's rate of growth is known its need of public improvements, both new ones and those to replace old ones, can also be estimated. The department heads in every city have in mind some extensions and improvements in their several plants which can be set down on paper with the probable cost thereof. These projects can then be gone over by the responsible authorities, can be modified, harmonized, and placed in order of importance and urgency, in such a way that, with revisions from year to year, any city can have a tentative borrowing programme covering five or ten years which will be of great value in the making of the annual budget. Some cities are already planning their work in this way.

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Statistics of Cities, and also in less frequent volumes on *Wealth, Debt, and Taxation*, of which the study for 1922 recently appeared. In the *National Municipal Review* from year to year will be found analyses of the municipal debt situation by Mr. C. E. Rightor. As to the purposes of municipal debt the most recent study is F. E. Clark, *The Purposes of the Indebtedness of American Cities*, 1880–1912, published as *Municipal Research* No. 75 by the New York Bureau of Municipal Research, New York, 1916. A great deal of interesting information for the bond buyer and the citizen is contained in W. L. Raymond, *State and Municipal Bonds*, Boston, 1923.

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CHAPTER XXIII

THE COURTS OF THE CITY

THE IMPORTANCE OF MINOR COURTS

In the series of steps which lead to the accomplishment of the purposes of government, no step is really of any more importance than any other. A chain is said to be no stronger than its weakest link. The break may come, however, not in that link but at the point where the strain is the greatest or the most direct. Certain departments in city government seem to break down more frequently than others not because they are relatively less well organized or efficient than others, but because they are subjected to especially severe strains. This is the case with the police department in most cities, and is likely to be the case with the local courts.

The courts stand in a peculiarly intimate and important relationship to the people of the city, and particularly to the poorer classes and the foreign born. Of all branches of local government it is the police, the prosecutors, and the courts which hear most frequently the weeping of women and children and the sighs and imprecations of broken men. It is to them that the people must look for the redress of grievances and for the punishment of their misdeeds. In a very large measure the opinion of the people as to the uprightness, honesty, and efficiency of the local government depends upon the treatment which they receive at the hands of the local judges. "Justice in the minor courts—the only courts that millions of our people know—administered without favoritism by men conspicuous for wisdom and probity," says Mr. Charles E. Hughes, "is the best assurance of respect for our institutions." [1]

Those who have not made a special study of the matter are usually astonished when told of the tremendous number of cases dealt with annually by the courts of a large city. In 1920, for example, there were 27,615 arrests made in the city of Cleveland, or about one arrest for every thirty-five persons in the population.[2] This figure does not

[1] *Journal of the American Judicature Society*, vol. II, no. 6, April, 1919.
[2] *Criminal Justice in Cleveland*, p. 159.

include the cases where the police released the parties after warning, which rose to the astounding total of 79,897. In Chicago in 1921, over 162,000 persons were arrested.[3]

In addition to all the cases involving actual violations of public laws and ordinances, there are the thousands of "civil cases," or cases where one person, to protect or enforce his rights, sues another or attempts to get a legal order to compel another to perform some legal duty. Among the cases of this general description are suits for breach of contract, for the collection of damages in case of tort, for divorce, the collection of alimony, or the support of children, and for the collection of wages, salaries, rents, grocery bills, and small claims of all kinds. For such cases the public provides courts and other facilities, but the public as such is not usually a party to the suit. The Chicago municipal court alone disposed of over 75,000 such cases in 1921.[4]

THE EVOLUTION OF MUNICIPAL COURTS

We can give but little attention here to that interesting phase of the history of local government which traces the present local institutions of England and America very largely from "courts" in early English and colonial times. When we look back into the sources of English local government we encounter unceasingly such terms as "the lord's court," "court baron," "court leet," "the court of quarter sessions," "the hundred court," and so forth. The original local government in many if not in all local areas was a court and nothing else. No branch had become specialized for legislation, and there was no special department or set of officers for administration. The court, which usually included a jury as well as some presiding officer, both declared the laws and accomplished what was needed to improve highways and sanitation by ordering some named inhabitant or inhabitants to perform their customary duties. The local court was a legislative, an administrative, and a judicial body, all in one, and it would be difficult to prove which phase of its work was the most important. Not until a fairly late date were sharp distinctions made between these three functions. It thus happens that right down into modern times many an English city council was referred to as the "court of common council," and that when sanitary or drainage districts were created they were sometimes governed by "courts of

[3] *Fifteenth Annual Report* of the Municipal Court of Chicago, p. 152.

[4] *Ibid.*, p. 145.

sewers." This use of language was transferred to the colonies in America. Thus the "General Court" of Massachusetts to this day is really the legislative body of the commonwealth, while the "supreme judicial court" is a separate body which was created at a later date for the rendering of judicial decisions.

The failure completely to separate judicial functions from others is exemplified also in the borough charters of the colonial period. Both New York and Albany under the Dongan charters of 1686 were to be governed by bodies known as "the mayor, aldermen and commonalty" of the city. These three elements, with the recorder, were to constitute "the common council" of the city for all legislative and administrative purposes. But the mayor, recorder, and aldermen, omitting the commonalty, were also to be justices of the peace, and any three of them in Albany, or any five in New York, were empowered to sit as a judicial tribunal "to hear and determine all and all manner of petty larcenies, riots, routs, oppressions, extortions, and all other trespasses and offenses whatsoever" within the city and in a certain area outside. They were also to have jurisdiction in specified civil cases.[5] This unification of all local powers and functions in the same persons was the rule also in Philadelphia and in other early boroughs.

It is important to note, however, that while substantially the same officials still exercised all three classes of local powers, a functional separation had already begun. At least there were separate meetings for different purposes, and the records were separately kept, much as if a modern city council should also be the local school board but should meet in separate sessions for school purposes. While sitting as a judicial body, the mayor, recorder, and aldermen were known not as the common council but as "the mayor's court" or "the court of mayor and aldermen" or even the "court of sessions." Thus we can say that we have in the separate meetings of the mayor, recorder, and aldermen for judicial purposes the first municipal courts in what are to-day the United States. And it would seem that they were considered in colonial times to be strictly local affairs, in which the colony had little concern.

The evolution of the municipal court system of a modern American city from the simple beginnings of the colonial period, or the equally simple beginnings of the western plains, follows several distinct lines.

[5] See Kent, *The Charter of the City of New York;* also, Peterson, *New York as an Eighteenth Municipality, Prior to 1731*, pp. 17–26; Edwards, *New York as an Eighteenth Century Municipality, 1731 to 1776*, pp. 31–33.

First, the courts become more clearly separated organically from the other branches of the city government, although the separation has not been fully completed everywhere. *Second*, the judges in these courts sit singly and become more and more specialized for judicial business and later for particular types of cases. *Third*, while on the one hand the political control of the local judges passes generally into the hands of the local voters and the party machines, on the other hand the municipal courts become welded more firmly into the state system of courts, and the city government as such loses direct control over them. The *fourth* step in the evolution, which is already being advocated, may be the complete unification of all the courts of original jurisdiction in each urban area into a single integrated court with a large panel of judges having equal powers, to each of whom will be assigned different types of work as the need arises. When this takes place the municipal court as a separate institution will have practically ceased to exist. Let us now consider this series of developments briefly step by step.

The failure of mayors' and aldermen's courts. The courts of mayors, aldermen, and recorders were originally distinguished by the fact that they consisted of a number of judges, usually untrained in the law, who acted in a judicial capacity *ex officio*, *i. e.*, by virtue of the fact that they held one or the other of the aforesaid municipal offices. In colonial times when the boroughs were small, and when only the well-to-do and better educated classes could participate in local politics, and when at best there were very few men with a knowledge of the law, such courts probably performed their functions as well as could have been expected. As the cities grew, however, and as the time of the mayor and other officers came to be more fully occupied with legislative and administrative affairs, court service required an undue amount of time. Their political connections and their usual lack of knowledge of the law must also have militated against their giving good judicial service. At any rate the time came when the work of adjudication of minor matters was taken from these officers and turned over to separate officers. In some places the recorder seems to have become specialized for judicial service; elsewhere the aldermen acted as justices.[6] The separation of powers was thus slowly introduced, but there was as yet no requirement that those who acted as justices be learned in the law. One important development which

[6] In *The Pittsburgh Survey*, vol. 5, will be found an exhaustive study of the aldermanic or justice courts in that city.

accompanied the separation was that permitting a single justice to hold court.

The failure of the justice courts. In the newer states of the west, it would appear, the evolution of municipal courts followed a somewhat different course. These states, which generally began without cities, established first a system of county or township government, or both, and set up within these districts officers called justices of the peace, who were locally elected, as a rule, to handle the petty local judicial functions required in rural districts. As cities grew up in the several counties the justices of the county continued in some cases at least to exercise their judicial functions therein. The justices were not required to be trained in the law, but as a rule they had no other public functions to interfere with the performance of their judicial duties. In some instances a difficulty arose from the fact that the justices had jurisdiction over the entire county, no matter where they resided or held court within it. Any person might be haled upon a minor charge before a justice holding court in a far corner of the county. This and other circumstances sometimes gave rise to systems of petty oppression and extortion. Unscrupulous lawyers, in connivance with venal justices, found that people often preferred paying small fines or alleged debts to making the trip to court. Where the justice was paid by fees per case he often squeezed a considerable income out of his office, not hestitating even to engage lawyers to drum up business for the purpose. Thus was much petty injustice done in the name of justice, while the public and the often unwilling litigants paid the toll. It was but natural that the foreign born, the poor, and the ignorant suffered most from such a judicial system; and that it broke down most completely in large cities.

The rise of specialized municipal courts. The failure of both the mayoral courts and the justice courts in large cities was due to a number of similar factors. The courts were without adequate organization and powers; they were not required by law to keep complete records of what they did; they were under no supervision, except in so far as their decisions might be overruled by higher courts; the judges, though generally lacking in knowledge of the law, were required to handle every type of minor and local litigation; and their official incomes were generally based upon the amount of business done by their respective courts. In a number of places the office of justice of the peace was a political plum of no small importance.

The movement for specialized judicial bodies to handle the minor

cases seems to have begun in the east early in the nineteenth century, if not earlier, and to have spread thence both west and south. At first the movement seems to have been piecemeal and experimental; there was no attempt at a drastic or thorough reorganization of courts. In some places the justice courts or the courts of mayors and aldermen continued to function for some purposes alongside of the new tribunals. To some extent there was competition among them for cases. Lawyers having the option took their cases where they expected to get the best results. The fee system of compensation was not entirely done away with, and the judge was not always required to be learned in the law.

The modern municipal court movement. The logic of events soon pointed out to the more populous and progressive cities the next step forward. This was to abolish the justice courts and all other courts having similar jurisdiction, and to set up in their places a single municipal court for the entire city. Such a court would consist of as many judges as were needed, and would have exclusive jurisdiction in all minor cases, *i. e.*, (1) in all cases of violations of the city ordinances; (2) in all other misdemeanor cases; (3) in the preliminary or "binding over" proceedings in serious criminal cases; and (4) in minor civil cases. This still left all major criminal and civil cases to be handled by the local branches of the state courts. It is important to grasp this point since it is so easy to think of every court operating within a city as being a "municipal court." In every large city there are courts of appellate jurisdiction, and also courts which have original jurisdiction in important cases, which are in no sense municipal courts. Correctly speaking a municipal court is one which has the four types of functions enumerated above.[7] A "police court" is usually one which handles only the first three types of cases named and has nothing to do with civil cases. Since there is very little in names, however, it is necessary to look to the nature of its jurisdiction to ascertain the true status of any court.

At this point in the development, mainly since about 1900, we see the municipal court standing as a separate and specialized judicial organ, while the city officials proper are limited to legislative and administrative functions. The municipal court, furthermore, is no longer under municipal control to any important extent. The local

[7] The Chicago municipal court, sometimes thought of as typical, is really a court of broader jurisdiction. It is, in fact, far on the road toward becoming one of the unified metropolitan courts spoken of later.

voters usually elect the judges, and the municipal treasury must pay their salaries and the expenses of the court, but the court itself is considered to be primarily a state court and is regulated by state law. It is still distinct from the higher state courts since it deals with minor cases only, both civil and criminal, while the state courts handle the more important ones, but it is obviously on its way to becoming simply a part of an integrated state court system.

Other characteristics of a modern municipal court are also of some interest. The judges are generally required to be learned in the law. Sessions are held in the local court house, although branch courts may be held here and there throughout the city. To the extent that they are centralized the dignity of the court is enhanced, since there is usually better provision for keeping order in the central court house. In the larger cities the judges as a rule sit singly, and are required to give full time to their judicial work. Their terms of office are longer than they used to be in large places and still are in small ones. Furthermore, the judges are paid regular salaries, not too large, as a rule, but still sufficient to give some prestige to the office, and to enable the judge to live without eking out his official earnings in doubtful ways. With the establishment of the system of paying salaries has gone the abolition of the fee system, so that commercialism in local justice can no longer be charged against some of our larger cities. All of these advances have served to raise the judges in their own esteem and in that of the bar and the public.

At the present stage of development in court organization we find, therefore, generally speaking, two sets of courts in cities, the local or municipal courts adjudicating minor cases, and the state district or circuit courts, under various names, dealing with the more important judicial matters. It will pay us now to analyze the problems of urban justice somewhat more fully than we have up to this point in order to lay the foundation for a discussion of present-day reform proposals.

CIVIL CASES IN URBAN COURTS

The problems of judicial organization and procedure are, in the main, so technical that the layman had best leave them to legal specialists. On the other hand some of these matters are of so great importance to the good government of cities that we must risk the making of some errors in order to present them. We take up first the civil cases. Of these the only ones which almost everywhere come within the scope of municipal courts are what we may designate small claims.

Small claims. Equal justice to rich and poor has not always been possible in the past because of the fact that there has been no adequate and inexpensive method of litigating minor claims.[8] A tenant refuses to pay his rent; a workman cannot collect his wages, and he in turn falls behind in paying his grocer and his butcher; one automobile is alleged to have caused damage to another; a dry cleaner refuses to replace a suit which the owner claims has been ruined in his shop,—these are examples of what we mean by small claims. They arise by the thousands each year, and the parties are not always so amicable and reasonable as to be able to reach a satisfactory private settlement though the amounts involved are small. If no settlement is reached there is a rankling feeling of injustice. The only solution has usually seemed to be for the aggrieved person to engage an attorney at considerable expense, to file suit, and to wait until the courts could reach the case. Time passes and fees pile up. Finally there may have to be a jury trial, with additional expense to both the state and the litigants. Persons of means can afford to make these outlays to protect their rights whether the cases be large or small, but poor men and women are deprived of justice when they find it beyond their means to do so.

The improvement of this situation involves the establishment of a special small claims procedure and the installation of a judge to look after such cases. The procedural steps need to be cut to a minimum, the fees to be drastically reduced, and the handling of cases speeded up. Wherever possible, too, the jury should be eliminated. Justice on the basis of law can be meted out in such cases by a single proficient judge. Although nothing seems simpler or more reasonable than this, it has been only in recent years that our legislatures have established small claims divisions in our urban courts. Already the creation of such tribunals has been amply justified.

Judicial conciliation and arbitration. A distinct problem in judicature is presented by the numerous business disputes involving considerable amounts which arise every year in large industrial and commercial centers. If a city is to be a good place in which to do business it should provide means for the quick and inexpensive settlement of such disagreements. The municipal court usually has only a limited jurisdiction in civil cases, while the local district or circuit court of the state can handle cases of more importance. In either court, however, it is necessary as a rule for the disputants to go through all the steps of legal pleading and trial, and to bear the attendant expenses for attor-

[8] Smith, *Justice and the Poor*, pp. 41–59.

neys and court fees. Equally inconvenient are the unduly long delays.

While not all disputes of this type can be settled equitably without resort to a regular trial, in many cases it is possible to end them justly and expeditiously in other ways. The solutions generally proposed are conciliation and arbitration, neither of which is fully possible without new powers being conferred upon the judges. When a judge has powers of "conciliation," he may, upon the request of one party, summon both parties before him, hear from them a statement of the facts, explain to them the law applicable to the case and the difficulties and expenses involved in a trial, and endeavor to bring them to an amicable agreement on the spot.[9] If he succeeds, he draws up an agreement, gets both parties to sign it, and then gives it the force of a legal judgment. "Arbitration" differs from conciliation in this important respect, that if the disputants agree to arbitrate, an arbitrator, chosen in pursuance of the agreement, hears the case and makes an arbitral award which the judge has full power to enter as a judgment without receiving the assent of the parties to the terms thereof.[10] There seems to be no important constitutional obstacle to the conferring of powers of arbitration and conciliation upon the courts; the powers already exist in some cases. The practical success of these new methods of settling disputes depends upon the standing, ability, and fairness of the judges who exercise the powers, and upon the support given by the leading commercial organizations to the plan.

The family. Largely outside the scope of the municipal court are such serious problems of the family as desertion, non-support, suits for separation or divorce, attempts to collect alimony after divorce, the relations of parent and child, illegitimacy, guardianship, and adoption. Some cases in this general field have important criminal phases, but most of them are purely civil cases. Social workers have for years stressed the need of attempting to heal some of these domestic difficulties before they become incapable of cure, and of making settlements in all cases more nearly in accord with social and economic facts. Unfortunately the judges have been compelled to deal with many types of cases without assistance, and have often been so far behind their dockets that by the time a separation or divorce case was reached it was too late to mend the rift in the lute. Again the obvious solution for large cities, where there are enough of these cases to warrant it, is the establishment of a specialized "family court" or "court of domestic

[9] Smith, *Justice and the Poor*, pp. 60–67.

[10] *Ibid.*, pp. 68–72.

relations," staffed not only by a judge but also by trained social workers and investigators to assist him.[11]

CRIMINAL JUSTICE IN CITIES

We spoke at the beginning of the chapter of the great number of arrests occurring each year in large cities. The causes for which arrests are made fall into four important groups, to wit:

1. In the first place there are the numerous infractions of municipal ordinances relative to vehicular traffic, health and quarantine, nuisances, the sale of liquor and impure foods, disorderly conduct, intoxication, gambling, and so on. In the Chicago municipal court in recent years these cases have usually numbered upwards of two-thirds of all offenses tried.[12]

2. A second large group of arrests come under the heading of misdemeanors as defined by either the common law or the statutes of the state. These would include cases of petit larceny, simple assault and battery, destruction of property, receiving of stolen goods, carrying concealed weapons, vagrancy, gambling, fraud, obtaining money or goods under false pretenses, and so forth. They are, in general, the lesser violations of law, for committing which the guilty person will not be sent to the state penitentiary.

3. A smaller number of arrests are for felonies or crimes, the more serious offenses against the state. Such would include forgery, burglary, robbery, assault with intent to kill, manslaughter, murder, and arson.

4. In numbers the smallest group of local arrests are those for the violation of national laws. These lie outside of our field and we shall not discuss them further.

In making this rough classification we are aware that the various groups of cases overlap on each other, and that the classification in one state differs from that in another. For example, gambling may be and often is an offense against both a municipal ordinance and a state law at the same time, whereas the same act of transporting and selling liquor may, as we have shown, be contrary to three laws, national, state, and municipal.[13] Furthermore in one state a certain type of larceny may be a crime whereas in another it may be only a misdemeanor. A classification has a certain usefulness, however, in that

[11] Smith, *Justice and the Poor*, pp. 73–82.

[12] *Fifteenth Annual Report* of the Municipal Court of Chicago, p. 152.

[13] See pp. 384–385, above.

it indicates the general lines upon which cases are apportioned among the different courts.

Violations of ordinances. The first function of a municipal or police court is that of deciding cases relative to the violation of city ordinances. It is the need of performing this function which justifies the creation of special courts within and for cities, since the justices of the county and state courts could not be supposed to be interested in or empowered to deal with such causes. For this purpose most cities have an equipment for law enforcement which parallels that of the state. First there is the police department for making investigations and arrests, secondly, the city attorney or municipal prosecutor for presenting the cases to the court, and thirdly, the municipal court for purposes of trial. In most places the proceedings in municipal ordinance cases are "summary," [14] by which is meant that the judge decides the case without a jury, since the constitutional right to a jury trial extends usually only to violations of state and national law. In municipal ordinance cases, therefore, the trial can be greatly expedited. A man apprehended for intoxication or vagrancy may be tried the same day, and he is frequently serving his sentence in the city's workhouse or jail within twenty-four hours after his offense. Some cities have, in fact, established night sessions of their courts in order to save time and to quicken the processes of justice. Large cities have also in a number of instances set up specialized traffic courts for handling the numerous cases involving violations of the traffic ordinances.

The violation of an ordinance is usually classed as a misdemeanor. A municipality has ordinarily no power to define crimes or to punish as crimes violations of its local regulations. The maximum penalties which may be meted out are, therefore, usually specified in the charter or laws governing the city, and consist of imprisonment, fines, and forfeitures. It is not uncommon to find the city authorized to punish the same offense with both a fine and a short jail or workhouse sentence. The maximum penalties run as high as $500 fine and six months imprisonment in cities as far apart as Portland, Oregon, and Norfolk, Virginia, but other cities have a much more limited power to impose punishment. On the face of things there seems to be no reason why one city should be permitted to punish severely a violation of its ordinances while another is limited to such a light censure as a $20 or even a $100 fine. To the successful gambler a small fine may be annoying but it is certainly not deterrent.

[14] Dillon, *Municipal Corporations*, 5th ed., vol. II, pp. 1115–1136.

Other misdemeanors. Where a municipal or police court exists for adjudicating cases involving the violation of city ordinances, there is no need of having another court for trying other misdemeanor cases. It has been common practice, therefore, to give the municipal court power to decide misdemeanor cases arising under the statute and common law of the state as well as those coming up under the municipal ordinances, and also to give the city attorney power to prosecute such cases. In such cases, however, while the procedure may be otherwise the same, the defendant will usually have the constitutional right to demand a jury trial; and where this is not available in the municipal court, it may be required in a higher court on appeal. The result is needless expense and delay which, however, a city may avoid in some cases by enacting ordinances covering the same ground as the state law, and proceeding to trial under the ordinance instead of under the more general law.

Preliminary hearings in criminal cases. A third function of municipal prosecutors and of municipal courts is connected with the holding of preliminary examinations in criminal cases. Actual trial in cases of crime takes place in a state court of general jurisdiction, and is usually preceded by a hearing before a grand jury which brings in an indictment. Weeks or months before this can usually take place, however, the suspect may have been arrested and lodged in jail. He cannot be kept there indefinitely without some judicial process to determine whether he is properly detained. It is customary, therefore, for the municipal or county prosecutor to bring him at once before a local justice of the peace or a municipal judge, who has power to hear the testimony of the police and of the suspect, and to determine whether there is enough evidence connecting the accused person with an actual crime to warrant holding him for trial. These proceedings are sometimes called "binding over" proceedings, since the suspect is bound by bail-bond or by incarceration in jail to appear before a higher court. It is for the judge to decide whether he shall be held or not, and if so, whether he shall or shall not be given the privilege of being released on bail.

We have now sketched briefly the functions of the municipal prosecutor and of the municipal court in cases of misdemeanor and crime. It is very clear that there is here a variety of functions to be performed and that there is room for specialization in the courts of the larger cities. To some extent this specialization has taken place, notably in the establishment of traffic courts.

The trial of criminal cases. Up to this point we have spoken of municipal courts and prosecutors. With few exceptions we find that there is separate machinery for the prosecution and trial of criminal cases. Instead of the city attorney or prosecutor there is a county or district attorney, and instead of the municipal court there is some state district or circuit court, sometimes called a county court or a court of common pleas. These prosecutors and courts are, of course, located within the city, but so far as any organic relationship with the municipal courts or prosecutors is concerned they might as well be many miles away. Criminal judicial business is divided by legal classification into two distinct parts, and those who handle one part of the work have no authority over and little or nothing to do with those who perform the other. It was learned in the Cleveland survey, for example, that the county prosecutor's office played no part in the preliminary stages of making out the charge or of getting evidence in cases of felonies which his office would later have to present to the grand jury and the courts, nor was there any regular system of taking down the needed information for transmission to the county prosecutor.[15]

The procedure in criminal cases after the suspect has been apprehended and bound over for trial consists generally of two stages. First the county or district prosecutor presents the evidence to a grand jury, sitting under the supervision of a competent judge, which has power to bring an indictment or "true bill" against the suspect and thus to hold him for trial. It may, however, find "no bill," whereupon he will be discharged. In some states the grand jury is no longer required and is used very little, with the result that the prosecutor has even more power over the disposition of cases than he has where he works with a grand jury.

The second stage in the process consists of actual trial in a court of competent jurisdiction before a judge and a petit jury of twelve men.

DEFECTS IN URBAN JUSTICE AND SOME PROPOSED CORRECTIVES

In 1919 the Carnegie Foundation published *Justice and the Poor* by Reginald Heber Smith, a volume which for the first time laid before

[15] *Criminal Justice in Cleveland*, pp. 138–139. Anent the general subject matter of this paragraph it should be noted, however, that Detroit has a really unified criminal court, the Recorder's Court. See *Journal of the American Institute of Criminal Law and Criminology*, vol. XI, pp. 398–418, November, 1920.

the American people a careful and comprehensive study of civil and criminal judicature in American cities with special emphasis upon the manner in which the poor were affected. The author not only pointed out many deficiencies in the administration of justice but also pointed to the results of some hopeful reform experiments then already under way. Three years later the Cleveland Foundation published *Criminal Justice in Cleveland*, a work embodying the special reports of a group of experts on every important phase of the problem of rendering justice in a modern industrial metropolis.[16] The number of separate defects pointed out in these two substantial volumes is so large that we refrain from even attempting to list them. Many of them are probably irremediable since "they are wider than time and place and inhere in all attempts to order human conduct and human relations by the force of politically organized society." [17] No matter how well organized the machinery of justice, the law cannot right every wrong or make perfect all human relations. Let us suppose that the police department, the prosecutor's staff, and the courts are all organized and their respective personnels trained and selected in the most perfect manner we can conceive,—the individual policemen, prosecutors, and judges will still be human beings, and the conditions under which they work will often defeat their best efforts.

At the same time we must recognize that many difficulties can be overcome. We know this because reforms undertaken here and there have actually borne good fruits. Without discussing the technical improvements in procedure which the legal experts appraise so highly, and without fully committing ourselves as to the ultimate desirability of all proposed reforms, we suggest that at least the following improvements are feasible and that they will undoubtedly do some good. For a more detailed discussion of these and other proposed reforms the reader must go to the great mass of special literature already available.

The selection and tenure of judges. The first problem is probably that of getting the best talent available for the bench. In this connection we must bear in mind that lawyers are trained in our schools of law not to do the work of judges, but to engage in the private practice of the law. Hence judges must be selected from among the practitioners of the law, and it were well to have men chosen who have had much successful private practice. Without a reorganization of the courts,

[16] For full citations of these and other works, see the references at the end of the chapter.

[17] Dean Pound, in *Criminal Justice in Cleveland*, p. 565.

the increase of judicial salaries, and the establishment of more security of judicial tenure, such men could not in many cases be induced to take places on the bench. No method of selection can get better men than there are available.

Two principal methods of choosing judges are now in vogue. One is that of appointment by the governor, a method used in Massachusetts and some other states. The other is that of popular election.[18] It is generally considered that appointed judges maintain a somewhat higher average level of ability than is to be found among elected judges. While objective evidence upon this point is inadequate, the writer inclines to the view that it is generally sound. Whether appointment by the governor would produce better results in the states where judges are now popularly elected is another question. The political machines which rule some of our states have their many henchmen who must be given places, and it is not to be supposed that many governors would ignore their claims, though it meant giving judicial positions to men not fully qualified. Where good results are being obtained through the appointment of judges by the governor, that system should certainly be continued, but there is no need of haste in extending this method to states where its results are wholly problematical, and when the power is given him, it should be conferred under restrictions which will work to reduce to a minimum the play of politics. In any case the desire for local and popular control over the courts must be weighed in the scales with the danger that popular election may result in elevating men of inferior capacity to the bench.

The objections to popular election of judges are not numerous but they are weighty. The first is that the nomination and election of judges adds another burden to an already heavy load being carried by the voters. This objection is particularly strong in large cities. The voters have, in general, little knowledge of judicial matters, and have very few criteria by which to determine the judicial qualities of candidates. When in the course of a few years they are asked to fill five, ten, fifteen, or even more judicial places, their failure to make uniformly good selections is a natural one. In the second place, popular election, with any system of nominations, serves to bring out some candidates for judicial office wholly without fitness for such a

[18] For a discussion of methods of selecting and retiring judges, see Bulletin VI of the American Judicature Society, reprinted as Bulletin No. 16 of the Massachusetts Constitutional Convention, 1917. See also *Criminal Justice in Cleveland*, pp. 251–277.

place. Parties put up as candidates men who deserve something from the party but who are not quite entitled to become mayor, congressman, or senator; or the men push themselves forward in primaries because they desire places on the bench. Thirdly, the campaign for votes with its hand-shaking and speech-making and distribution of cards has a tendency to lower the dignity of the judicial office, and also to deter some able men who do not like that sort of activity from becoming candidates for office. A fourth objection is that it makes the judge on the bench, who is nearly always a candidate for reëlection, too subservient to popular whims and overmuch inclined to favor his partisans. The judge may be too much mixed up in politics, too approachable, too yielding, instead of being the stern and upright person we usually think of as a judge. Others think it desirable in a democracy to have the judges "close to the people," full of sympathy and understanding, and neither harsh nor strict. It is our view that the popular election of judges upsets the normal process of government no more seriously than does the popular election of administrative officers. In both cases political considerations, using the term in a derogatory sense, are permitted to invade spheres of governmental action where they should not be tolerated.

In weighing these objections to popular election of judges the reader will bear in mind that here again we have a problem in relative values. There is no absolutely perfect way of getting good judges. We may suggest, however, that some of the main objections to popular election may be overcome without the complete abolition of that method of choice.[19] In the first place the judicial ballot should be shortened. Even in large cities it would be sufficient for the voters to elect not over three or five judges, and in smaller places it would be enough to elect one. This would concentrate the voters' attention, and make each candidate more conspicuous and important. In the second place judicial elections should come only at fairly long intervals, probably from three to six years apart, be separated from other elections, and be conducted without the designation of party affiliations on the ballot.[20] This would serve to emphasize the importance of judicial elections, and to stress the qualifications of the men as distinguished from their

[19] We are aware that the following mild proposal differs from that of the committee of the American Judicature Society.

[20] The Cleveland experience with non-partisan election of judges was particularly unfortunate, apparently due in large part to the failure of the bar to wield any great influence in the elections. Other cities have not had the same results.

party affiliations. In the third place the three or five judges elected should form a local judicial commission with the power to select upon a merit basis other judges to the full number needed for handling the local judicial business. The commission of elected judges should also be empowered to remove unfit judges for cause. Fourthly, it goes almost without saying that judicial terms of office should be extended, and that judicial salaries should be made adequate for the purpose of attracting men of proved ability. The voters need to grasp the idea of building up a professional group of judges who are distinct from the great body of lawyers and who give their lives to the advancement of justice and law.

The plan which we have here sketched is premised upon the expectation that local bar associations and other groups will pay increasing heed to the necessity of selecting able men for judges, and will throw themselves actively into campaigns for this purpose. In some cities in Wisconsin, Minnesota, and elsewhere the voters have gladly accepted leadership from the lawyers in this matter. Thus the bar becomes more or less responsible for the quality of the men on the bench; and it is much to be doubted whether, under any system of selection, the judges will be a distinctly abler group than the lawyers insist upon having.

Other personnel problems. But it is not only the judicial personnel which needs to be improved. The prosecuting attorneys, now generally elected by popular vote, are frequently without notable qualifications for the office, and are almost always deep in local politics; and although there have been cases of very able and impartial men chosen in this way, the results are at times distinctly unfortunate. Better results would be obtained if the local judges or presiding judge had the power to nominate two or three men of capacity for the position of chief prosecutor, of whom the governor should appoint one. Assistant prosecutors should unquestionably be appointed on the merit principle by the chief, and should be responsible to him.

The chief and assistant clerks of the court and also of the prosecutor's office had best be selected by examination under the merit system. Much of the present atmosphere of political favoritism which permeates many courts and prosecuting attorneys' offices can be dispelled in no other way than by the abolition of all spoils in the filling of these places. No argument is needed for giving indefinite tenure to as many as possible of these minor officials in order to promote morale and professional spirit in the service, and also to pre-

serve for the public benefit all the acquired skill and experience of the staff.

Unification of courts. Though we have spoken first of personnel, we have kept in mind also the need of more systematic judicial organization. Those who have paid special attention to this problem are almost unanimous in saying that the courts in each large city need to be unified.[21] The courts in many places to-day repeat the pattern of a disintegrated city government in which there are different independent boards and other authorities for different purposes. In both cases there is much of the same overlapping and duplication of work, and the same failure to pool common staff functions in the interest of a business-like proficiency. What urban courts lack as much as anything else, we are told, is good business management,[22] and where tens of thousands of cases must be handled each year the need of efficiency cannot be doubted. Let us look briefly at some of the defects in organization which seem to point to the need of unification.

1. If there are separate courts for different types of cases, the judge in one may be facing a long docket of cases which have accumulated for months or years, while another judge is able to spend a large part of his time at golf. The one probably could not legally help out the other if he would, but even if he had the power to do so there is no one to compel him. The resulting delays may be serious, for promptness is generally of the essence of justice, and is absolutely essential in penal matters.

2. In establishing separate courts for different purposes the legislature has usually seen fit to limit the jurisdiction of each strictly to the types of cases to be handled, to restrict the powers of the judge proportionately, and to outline in detail the procedure to be followed. State lawmakers have in fact generally refused to devolve upon the judges adequate powers of rule making in matters of procedure, preferring to build up a large body of fairly rigid statute law upon the subject. The result is frequently a miscarriage of justice, for the judge finds himself without power to do the thing which needs to be done. The panel of judges in a unified court should be empowered to make and to alter rules of procedure to meet new situations as they arise.

3. When a legislative body establishes a municipal court for minor cases in general, a small claims court, and so on, it usually attempts to

[21] See especially the contributions to the *Journal of the American Judicature Society*.

[22] Herbert Harley, in Woodruff, *A New Municipal Program*, ch. XIII.

adjust the salary of the judge to the financial importance of the cases to be decided, with the result that the municipal judges generally receive smaller salaries than the local judges of the lower state courts of general jurisdiction. It is apparently assumed that small cases can be handled by small men, and hence that public money should be saved at this point. This is to overlook not only the large numbers of such cases, but, what is even more serious, the tremendous social importance of according equal justice to rich and to poor, and of having the many persons of small means who come to the minor courts favorably impressed from the outset by the wisdom and fairness of the judges. The poor should be served in their numerous small legal difficulties by judges of as high probity and as good training as those who serve in the higher courts handling more important cases. The poor cannot afford to appeal to higher courts, and in many cases are not legally able to do so. "All present experience," writes Mr. Herbert Harley, "negatives the theory that economy is to be obtained by employing inferior judges for small causes." [23]

We have here suggested a few of many considerations which argue for the unification of courts. The one court should be given every possible type of original jurisdiction needed by state and local courts. Every case, except federal cases, arising within the city would have to be brought to this one court, and no real cause would have to be dismissed or transferred to some other court for lack of jurisdiction. A single clerk of court with an adequate staff would docket every case, prepare all papers, and keep all records for the entire court, and would also exercise supervision over the assistant clerks in the different branches of the court. This is very largely a problem in business management. The court would have its own rules for the classification of cases, and the presiding judge acting as a business manager would assign cases to the different judges so that all would be working steadily to keep down the docket. It would be possible to promote specialization under so flexible a system even better than to-day; one judge would be assigned to small claims, another to traffic, another to family matters or juvenile cases, another to criminal cases, and so on; but the desire of each judge to specialize would at times have to yield to his duty to help in deciding other types of cases. Each judge, instead of being legally limited to some particular group of cases, would be given full power to deal with every legal question arising in any case assigned to him. In this way many useless delays

[23] Woodruff, *A New Municipal Program*, p. 242.

would be avoided. Finally, since all judges would have substantially the same pay and standing, some of the most capable judges might be assigned to those numerous cases arising among the poor classes which are now turned over to the most poorly paid and presumably least capable judges.

Unification of courts might also be accompanied by unification of prosecuting offices. Within the given area the entire problem of prosecution could well be vested in one chief prosecutor and his staff, leaving it to him to decide how to apportion the work among his assistants. This suggested unification is but a phase of the problem of city-county consolidation spoken of in an earlier chapter.

Procedure and records. With a single unified court in each large community composed of capable, professional judges, the legislature might well be induced to confer thereon the power to regulate procedure and practice in any way needed to promote efficiency short of trenching upon fundamental constitutional rights. In criminal cases the zigzag "path of justice," with its many points of escape for the culprit, has been made all the easier for him and his lawyer by the rigidity and technicality of the rules of procedure.[24] In civil cases also the rules have many times prevented the courts from doing substantial justice.

The unification of courts would also facilitate the keeping of records, the compilation of statistics, and the preparation of comprehensive reports, things which are needed to enable the judges to adapt their methods and rules of procedure to the changing needs of a dynamic urban society, and to provide them with the recorded and statistical information necessary for objective criticism of their own work. Reliable records are one of the chief tools of good business managers in all fields.

Modern aids to justice. The figure of justice is usually represented by the form of a woman who stands blindfolded with scales in one hand and a sword in the other. She is blindfolded, no doubt, to show her impartiality. Being unable to see the persons who bring suits before her, she is unable to play favorites. The symbol lends itself to misinterpretation, however, as we see in the phrase "blind justice" with its implication of ignorance. Modern philanthropy takes a different view of justice. It insists that the judges must not be blindfolded, but must see those who come before them, must know their lives and their circumstances, and must adapt penalties and remedies

[24] See *Criminal Justice in Cleveland*, especially p. 238, where will be found a diagram showing the many means of escape provided for the criminal.

to the needs of particular parties. The idea is that cold impartiality should be replaced by a sympathetic and reasoned discrimination, that if necessary special facilities should be given to the poor to aid them in litigation, and that the sword should be not the only but the very last resort of justice. Furthermore, modern science has begun to come forward with the information needed by the courts in order to put into practice this new view of justice. It has produced psychiatry, and certain branches of psychology, sociology and criminology to aid the judges in their work. By their combined efforts modern philanthropy and science are helping to make over our basic conceptions of justice, the one by insisting upon removing the bandage from her eyes, and the other by training her eyes to see things which once were hidden.

The modern court needs every aid that can be given it to conform to the broadening idea of justice. In the first place it must put real substance into the empty theory that all men are equal before the law by affording poor litigants as nearly as possible the advantages enjoyed by well-to-do litigants. Small claims courts and conciliation courts are a move in this direction in the field of the civil law. In the field of the criminal law the need is that of finding capable lawyers to defend poor persons who might otherwise be punished wrongfully through failure to get adequate defense, for it is just as much the duty of the law to protect the innocent as to punish the guilty. The practice almost everywhere in this country has been and is that of assigning to defend a poor person some inexperienced, young, or inefficient lawyer who idles about the court room for the purpose of picking up just such cases, the public paying a fee for each case. Some lawyers even make of this work a distinct "profession," and use the fact that they have been assigned as counsel in a case as a means of extorting as much money as possible out of the relatives of the accused.[25] The defense thus provided is not only inadequate for the accused person, but it is also expensive to the public.

One solution is that of providing a regular "defender" at public expense, as is done in Los Angeles.[26] A lawyer of ability is selected to whom all such cases are assigned. He has a salary and some office assistance. Not only does he get an opportunity to specialize in criminal law, but he comes also to know his clients and their ways and circumstances much better than could the lawyers assigned in the customary way. Furthermore, with experience he handles the cases

[25] Smith, *Justice and the Poor*, pp. 113–114.
[26] *Ibid.*, pp. 105–127.

more thoroughly and expeditiously, and probably with less expense to the public. For these and other reasons students of judicial reform have come to favor the establishment of the office of defender for handling all important criminal cases for poor people. Whether the same should be done for minor cases, and whether the public or some private legal aid organization should pay the defender's salary and expenses are questions still in dispute.

For protecting the poor in civil cases, and also to some extent in criminal cases, there have been built up in a number of large cities so-called "legal aid societies." [27] Such organizations provide one or more lawyers who keep regular office hours, who advise the poor on small legal matters without charge or at a nominal fee, and who prosecute their cases or defend their interests in court. These societies, which do a splendid work, are an excellent practical illustration of the insistence of modern philanthropists on the giving of equal justice to the poor.

A second need of the courts if they are to do complete justice is to have scientists upon their staffs to advise them in matters relating to medicine, psychology, and psychiatry. Everywhere can be found pseudo-experts who are willing, if paid good fees, to give "expert testimony" on either side of any case. The longest purse is likely to win if the courts are not provided with their own genuine experts for the purpose. The latter may help in some cases to decide whether the defendant actually did the deed with which he is charged, but still more they can help the judges to understand whether there were really mitigating circumstances, and what should be done with the guilty person following conviction to prevent his repeating his act, to reconstruct him for a useful life in society if that is possible, and also to prevent his reproducing his kind.

A third requirement of the modern court is that of adequate assistance from trained social workers for the investigation of home conditions and for the enforcement of the terms of parole and probation. Modern penology has introduced many new ideas looking to the rehabilitation under conditions of home life of persons guilty of crimes and misdemeanors. The judge who puts convicted persons, whether juveniles or adults, on probation in lieu of sending them to jail or penitentiary needs the aid of one or more workers to follow up probationers and to keep a full record of their lives. While we cannot stop to discuss them, we must mention such adjuncts as important to

[27] Smith, *Justice and the Poor*, pp. 128–249, and appendices.

any complete modern court in a large city. It is through such aids as these that justice may become at once more scientific, more humane, and more socialized,—an instrument not alone for punishing the guilty but for promoting the welfare of all individuals and of society. The need for such a new attitude toward the law cannot be questioned. Equally great, however, is the need of more vigor, business-like thoroughness, and promptness in the meting out of justice according to present rules.

URBAN GOVERNMENT AND URBAN COURTS—A PARALLEL

We cannot leave the subject of urban judicial organization without pointing out again how much the problems of city courts are like those of the city government generally. Historically we begin in both cases with part time, unspecialized officials. The mayor, recorder, and aldermen give some time to local legislation, some to administration, and some to judicial matters, and are still left free much of the time to attend to their private affairs. With the growth of cities in size and in wealth there came the need and the opportunity for specialization. The public business took up more and more time and called for greater division of labor. To charter framers and lawmakers the obvious solution of the problem was to create separate and distinct organs for each new function as it appeared. An officer was created for this, a board for that, and a court for some other purpose. Not only were the powers of municipal government apportioned among the three traditional departments of government, legislative, executive, and judicial, but as the need for specialization increased there was subdivision within each.

Of itself specialization was undoubtedly desirable, but it was accompanied by an unfortunate tendency toward disintegration of the government. Just as the administrative work of the city came to be parceled out among a number of boards and departments which had no organic connection with each other and no common director, just so there was a tendency to create a number of disconnected courts which were in no way linked up into a system. Each court was responsible for the decision of cases in a particular field of law, but no one was responsible for the administration of justice as a whole. To speak figuratively, the business had to be done in a series of small independent shops instead of in one great store with many departments. The result was that there was overlapping in the performance

of some functions, neglect of others, and faulty business management throughout. A rigid subdivision of the work according to the ends to be accomplished deprived the courts of the opportunity to benefit by savings in overhead and in the proper utilization of means. The total effect of inefficiency was only heightened by the archaic methods of procedure, faulty prosecution in criminal cases, and the failure to raise the bench to high levels of professional dignity and ability.

The present generation of judicial reformers suggest for these difficulties a group of related remedies similar to those which are being proposed in the field of municipal administration proper. Of these reforms the *first* is that of complete unification of all the local courts into a single court which is to be responsible for all judicial affairs in the whole community. No one can fail to see how similar this proposed reform is to that for the complete unification of the city administration under a manager or mayor. This centralization of responsibility does not require that the court give up the advantages of specialization. On the contrary, under a unified court system, specialization of functions can be carried farther than it yet has been, for the court itself can divide up the work among the judges in any way that seems most likely to produce good results.

Second. The advantages of both unification and specialization are to be obtained for the courts as for the city's administrative departments by the establishment of central business management.

Third. In order to expedite the conduct of judicial business it is proposed to give the judges of the unified court considerable power as a group to alter those rules of procedure which do not go to the fundamentals of personal and property rights, and to regulate the conduct of judicial business in the light of their own experience. This proposal is very much like that to give the city manager and the department heads considerable freedom in the devising of administrative methods. In both cases there is need of a more liberal delegation of powers to those who understand the work because they are actually engaged in it.

Fourth. The need is felt, finally, of raising the bench to higher professional standards by improved methods of selecting judges, longer and more secure tenure, and higher salaries. This movement, if successful, will make the judges more than ever a specialized group of workers. It is recognized that not every lawyer who can get enough political influence to get a judicial appointment, or win enough votes to be elected a judge, is qualified to be one. In this respect, too, the

movement for a more professional city administration is paralleled by the attempt to improve the urban courts.

REFERENCES

While there is not sufficient published material on the development of American municipal courts up to about 1900, there is an adequate literature covering the problem of urban court organization and procedure as it stands to-day. We have already called attention to Reginald Heber Smith's excellent volume *Justice and the Poor* published for the Carnegie Foundation at New York in 1919, and to the monumental report on *Criminal Justice in Cleveland* published by the Cleveland Foundation at Cleveland in 1922. The contributors to the latter study were Raymond Fosdick, Reginald Heber Smith, Herbert B. Ehrmann, Alfred Bettman, Howard F. Burns, Burdette G. Lewis, Dr. Herman M. Adler, Albert M. Kales, M. K. Wiseheart, Felix Frankfurter, and Roscoe Pound. Special attention should be called to the illuminating summary and generalization of the whole report by Dean Pound at pp. 557–652. There is a valuable bibliography at pp. 708–714.

Excellent material will be found also in the bi-monthly *Journal of the American Judicature Society*, published at Chicago, and in the *Journal of the American Institute of Criminal Law and Criminology*, quarterly, also published at Chicago. Attention should also be called to the following: Harry Olson, "Efficiency in the Administration of Criminal Justice," in *Report* of the New York State Bar Association, 1917, pp. 275–344; Kate H. Claghorn, *The Immigrant's Day in Court*, New York, 1923; Paul U. Kellogg, ed., *The Pittsburgh Survey*, 6 vols., New York, 1909–1914, vol. V; the article by Herbert Harley on "Business Management for City Courts" in Woodruff, *A New Municipal Program*, New York, 1919, chap. XIII; R. S. Saby, "Simplified Procedure in Municipal Courts," in *The American Political Science Review*, vol. XVIII, pp. 760–772, 1924; and Munro, *Municipal Government and Administration*, vol. II, chap. XXXII.

CHAPTER XXIV

THE PROGRAMME OF MUNICIPAL REFORM

Whoever has read with care the preceding pages, or has observed with understanding the reform movements of the past forty years, must have been impressed and heartened by the evidences of a new spirit in American city government. A leaven has been at work, and is still working. The reform of city government has gone forward as never before. In some particular city, perhaps, the movement has scarcely begun, and in another it has proceeded with laggard steps, but ever and anon one gets a glimpse of the movement as a whole, and is astounded at the mass results that have been achieved. Municipal politicians are, no doubt, much as they were, and always have been, and perhaps ever will be, but they move now in a new milieu.

Conditions are not what they were when Aaron Burr committed frauds on the election laws in New York; no, nor even what they were when Boss Tweed was a self-confessed "statesman" in the same place, or later when the "Combine" ruled St. Louis. Absolute purity has not been attained in any American city as yet, and perfect municipal efficiency is still much sought after and never found. All things considered, however, we can see already a change of great importance. The seed has been sown by the reformers of the past, and it rests with the present and future generations to tend the fields, to keep out the weeds, and to plow deeper and fertilize more generously.

In the following pages we shall outline the rise and indicate the scope of the American municipal reform movement. We shall see the development of a composite programme of reform measures and gauge as well as we may the actual progress which reform has made and the results which have been obtained. If we succeed we shall also have furnished the student with a convenient summary and review of much that has been said before.

We need first to make clear what we mean by reform. Brand Whitlock in *Forty Years of It* made a scorching criticism of a certain type of puritanical reformer who desires to reform the personal lives of

others through drastic governmental action.[1] It is not such reformers or reforms that we have in mind. On the contrary, Mr. Whitlock himself, though he disliked the term, is a reformer according to our definition. He wanted to change the rules under which city government is carried on,—to give cities more power of self-government, to extend their control over public utilities, and to make the city administration a more human and serviceable institution. We have in mind a definition like this, vague as it may seem. We see a municipal reformer as one who is interested in the betterment of city government not for any selfish gain that he may get therefrom but for the benefit of the public. Politicians, and others too, sometimes desire to change municipal organization and legislation for their own benefit. These we do not classify as municipal reformers. A municipal reform is some measure designed to improve city government for the welfare of the entire population. Whether every reform measure does actually tend to better conditions is a question which cannot be answered in advance and upon which there may always be differences of opinion.

THE ORGANIZATION OF REFORM

In its earliest manifestations the reform movement seems to have been a localized thing, and it exhibited to some extent the narrowness of vision which might have been expected. The first thought seems to have been usually to "get rid of the rascals" in office, and to "put good men in their places." The grand jury and the local prosecutor were called into action, and in some places the voters organized reform parties or voters' leagues to search out and to publish the records of candidates and officeholders. This sort of reform undoubtedly had its value, but its effect was not long felt. When something more drastic was required, resort was had to the legislature to amend the local charter, but often the charter-framers were so ill-informed that nothing of any value was accomplished. Much of the needless diversity in American city charters may be traced, however, to this fumbling of isolated cities with their problems of organization.

The reform movement as we know it to-day has been a tree of slow growth. Its roots reach back into the earliest part of our history, but

[1] Pages 217–303, *passim*. See also his letter *On the Enforcement of Law in Cities*, addressed to a committee of citizens, published at Indianapolis, 1910; reprinted 1913. In his work on *The Government of American Cities* Professor W. B. Munro has a good chapter on "Municipal Reform and Reformers." See also ch. I in the latter's *Personality in Politics*, New York, 1924.

its greatest progress has been made in the past forty-odd years. In fact it did not really become worthy of the name of a movement until it came to be (a) founded upon careful study, and (b) more or less nationwide in scope. There was needed both the intensive local research or investigation, and the exchange of opinion and experience among cities, before a well-based advance could be made. Little careful attention seems to have been given by students to municipal problems until in the '70s, and not much, in fact, until the '90s.[2] It was between 1870 and 1900 also that national organizations began to form for the interchange of municipal information, the most notable development being the organization of the *National Municipal League* in 1894. Since about 1900 both of these lines of advancement, *i. e.*, research, and the exchange of ideas, have been pushed forward with great rapidity. The establishment of the first municipal research bureau in the city of New York in 1906 gave a tremendous stimulus to the whole reform movement.

The organizations which have taken part in the movement are too numerous to name, but we may at least briefly characterize them by classes. Among national non-professional organizations the *National Municipal League* easily outranks all others in importance. Founded only thirty years ago (1894), and never composed of many thousand members, it has nevertheless been the head and front of the advancing column, and a principal focal point for the dissemination of municipal information and the promotion of municipal reform throughout the United States. It has chosen to represent the great body of informed citizens and students rather than the politician and officeholder as such, and it has been sufficiently catholic in its views to refuse to be the tool of any one interest or to stake its existence upon any one reform proposal. It is, in fact, the reform programme of this league, first adopted in 1900 and then revised and reaffirmed in 1916, which furnishes most of the material for this chapter. This programme covers most of the important phases of the municipal problem in America to-day.[3] The *National Municipal Review* and other publica-

[2] Two books on municipal reform published in the '90s and still worthy of mention are William Howe Tolman, *Municipal Reform Movements in the United States*, New York, 1895, and Thomas C. Devlin, *Municipal Reform in the United States*, New York, 1896. Of course, all books dealing with municipal government deal also to some extent with the reform movement.

[3] *A Municipal Program*, 1900, published by the league, contains not only the draft of the proposed constitutional provisions and city charter designed to bring about the desired changes, but also a series of articles by John A. Fairlie, Horace

tions of the league are our principal sources of information upon the progress of municipal reform in all its branches.

Other national organizations of lay men and women which have more or less influence in municipal affairs are difficult to classify. Some, like the *Chamber of Commerce of the United States*, the *National League of Women Voters*, and the *General Federation of Women's Clubs* have educational programs of a general character but do not restrict themselves closely either to municipal affairs or to any particular reform to the exclusion of others. They make general investigations of problems, disseminate information, and adopt resolutions. Through their local organizations they sometimes throw themselves upon one side or the other of particular questions. More specialized in their aims are the *American Civic Association*, with its interest in the beautification of cities through city planning, park development, and smoke prevention; the *American Public Health Association*, concerned with all phases of the health problem; and the *National Tax Association*. The latter organizations are to some extent professional as well, since they include a number of experts in their respective fields. Essentially non-professional, but highly specialized in purpose, are the *National Civil Service Reform League*, which strives for the establishment of the merit system in public employment, the *Proportional Representation League*, which is now primarily interested in the Hare system of voting, and the *National Popular Government League*, which advocates the initiative, referendum, and recall. Many other national organizations of the same general type could no doubt be discovered by careful search.

A distinct group of national organizations may be designated roughly as professional and official. Some of these societies include very few public officials, and others are far from being professional, yet altogether the group is fairly homogeneous. The *Governmental Research Conference of the United States and Canada* is composed primarily of persons regularly engaged in municipal research work. Some of them are university instructors, but more are workers in municipal research bureaus. The *National Association of Civic Secre-*

E. Deming, Albert Shaw, Frank J. Goodnow, Leo S. Rowe, Bird S. Coler, Charles Richardson, and Delos F. Wilcox, in explanation of the programme. The revised programme of 1916, first published as a pamphlet without full explanations, was reissued in 1919 in a volume entitled *A New Municipal Program*, edited by Clinton Rogers Woodruff. In this volume will be found articles by leading authorities explanatory of each phase of the programme.

taries consists of secretaries of city clubs, local voters' leagues, commercial clubs, and similar organizations possessed of municipal interests. The *City Planning Conference* is composed largely of professional city planners, of whom some hold official positions. The *National Assembly of Civil Service Commissions* consists of the members of state and municipal civil service commissions, and is wholly distinct from the *National Civil Service Reform League*, mentioned above. There are numerous other organizations which scarcely need to be described, such as the *City Managers' Association*, the *National Conference of Social Work*, the *American Water Works Association*, and the national organizations of mayors, park executives, city engineers, firemen, policemen, financial officers, purchasing agents, attorneys, clerks, and others. Some of the organizations in the last group are strong and active, while others, and especially those which are composed of non-professional elective officers, have difficulty in maintaining an existence. It may seem to be a misuse of terms to designate them all as reform associations, yet each one is interested in making betterments in local government in some particular field. To the student of municipal progress it is exceedingly encouraging to find so many national organizations already at work although their aims are partly divergent.

As we turn from national to state organizations we find to some extent a duplication of the list already given. Some of the national associations are in fact built upon the federal principle, with state organizations as constituent units. In some cases, however, there are quite independent state municipal leagues, tax associations, civic associations, public health societies, and associations of municipal officials. Because the state is the unit of control over them, the cities themselves have organized in many places into state leagues of municipalities. Such leagues are particularly strong in California, Texas, Kansas, Iowa, Minnesota, Wisconsin, and New Jersey, and in New York under the title of the *State Conference of Mayors*. These state leagues of cities are in some cases recognized in the state law, and some of them work in close coöperation with state-supported bureaus of municipal research. While the dues-paying members are usually the cities themselves, it is naturally the elected officials who attend the annual conventions and who manage the league affairs. Because of this fact such leagues are more interested in municipal home rule and in extending local taxing and borrowing powers than they are in the political reorganization of cities, but they display also a considera-

ble interest in technical matters. In a number of states they exercise some influence upon legislation.

We come finally to the purely local organizations. Here again we need to distinguish between lay organizations and those which are professional or official. Local civil servants such as policemen, firemen, clerks, teachers, and others, are in many cases organized into societies for the protection of their own interests. Their influence has naturally been thrown on the side of the merit principle in appointments, against arbitrary removals, and in favor of adequate pensions and good working conditions for employees. It is unfair to imply, however, that they have stopped with these things. Organizations of laymen are far more numerous than these official bodies, and are almost equally active. We refer the reader here to Chapter VII, where the groups active in municipal politics are more fully discussed. Briefly summarized the important local reform organizations are commercial, professional, civic, and religious. They include women's clubs, commercial clubs, real estate boards, city clubs, municipal research bureaus, civic leagues, taxpayers' leagues, neighborhood leagues, health societies, organizations of social workers, parent-teacher associations, church clubs, lunch clubs, labor unions, and many others. It is indeed sometimes said that the average city has too many rather than too few organizations active in public affairs. While a small number of them have had long and honorable careers in local reform work, many of them are weak and short-lived. "Committees of a Hundred," of thirteen, and of every other conceivable number, are often created with only temporary purposes in view.

As one surveys the whole series of organizations, lay, official, and professional, national, state, and local, one is impressed by the possibilities of actual progress which lie in their joint efforts. Unfortunately there are real difficulties in the way. A national reform organization may have an excellent program, but reform must still come in and from the locality, from the state or city as a unit. Localism, with all its real merits, still has its disadvantages. A single local experience weighs more heavily in the scales than all the statistics of the scientist. The expert is always more or less suspect, particularly if he be an outsider. Local politicians make it a point to throw doubt upon the reliability of the judgment of a man who "does not know the local situation." Thus it is that much of the advice of the reform agency falls as lead bullets upon the steel of local conservatism.

This difficulty is only enhanced by certain others. The national

societies are not themselves in perfect agreement upon what is the best thing to do. Each doctor prescribes his own cure.[4] Upon many points there has been no adequate research, and what is truth is hard to say. Bad advice has frequently come from good sources. These difficulties go back in part to a common predicament of all reform agencies, their lack of the funds needed to conduct the exhaustive scientific researches that are needed, and to pamphleteer to the extent required to bring their findings home to all citizens and officials. "Facts! Facts! Facts!" says Bryce, are the great need of democracies. "Funds! Funds! Funds!" say the reformers, "for without them we cannot seek out and present the facts."

ELEMENTS OF THE REFORM PROGRAMME

As we look into the elements of the municipal reform movement we see a number of distinct *motifs*. Each has its own origin and its own purpose. First one is apparently dominant in a particular local situation, and then another, but no one is ever completely lost after it has been brought into being. It is only by taking a cross-section view that we see how composite a thing the whole reform movement is, and how nicely some parts of it fit into others.

1. **Getting rid of the rascals.** As we have said above, when municipal conditions in any city become notoriously bad, the instinctive first thought of many persons is to oust all officials tainted with corruption and to put men of proved honesty in their places. The demand for such reform in the elected personnel has taken several routes to expression. One is the use of the machinery of law enforcement, especially the grand jury hearing and the subsequent criminal trial to bring corrupt officials to book and to get them out of office. Another method is that of organizing a reform party for immediate political action against the incumbents. Such movements usually last for only a few elections because the reformers are generally incapable of building up a political machine without resort to the very spoils methods against which they have organized. Another fairly successful method of procedure has been that of organizing voters' leagues (under various titles) for the purpose of gathering and publishing accurate information

[4] Let the reader compare, for example, the views of the National Municipal League, the Governmental Research Conference, and the National Civil Service Reform League upon the question of the proper organization of municipal civil service commissions. See note 8, p. 462.

about candidates for public office, and thus hastening the elimination of unfit officeholders and the election of better qualified men. As a rule the voters' league is not a party, because it does not put up candidates of its own for office.

The reform which looks merely to the changing of the present personnel of a city government and to the punishment of corrupt officials is not the sort of reform that appeals to any particular nationwide organization. It does not strike deep enough to give real promise of permanent improvement. In the nature of things it must be a local matter. Nevertheless the "muck-raking" and grand jury stage in the betterment of city government, and the subsequent electoral drive against dishonest and incompetent officers, are exceedingly important steps in the initiation of local reform. They serve a distinctly educational purpose, as a rule, since they usually reveal to the electors the vicious network of interests which lend their influence and support to the corrupting forces in government. The moral appeal is, furthermore, a potent one, and it is difficult to see how other reforms could have been brought about without the house-cleaning which many cities underwent prior to 1910.[5]

2. **The city and the state.** In the United States, for special reasons, a second thought of the reformers was that state legislative interference in city affairs is the root of many if not most municipal evils. They reasoned that if the city could only be freed from such meddling the local citizens would soon show the requisite interest, probity, and intelligence to correct matters themselves. The movement for ensuring to cities a larger sphere of local self-government had an early beginning in America, but it seemed to rise to a dominant plane in the decade 1870–1880. In that decade a number of states forbade special legislation for cities, Missouri and California set going the movement for municipal home rule, and the Michigan supreme court handed down its famous decision asserting that local self-government is a

[5] It is impossible to refer here to all the literature dealing with the exposure and the attempted punishment of municipal corruption. Among the more notable books are Lincoln Steffens, *The Shame of the Cities*, New York, 1904; Gustavus Myers, *The History of Tammany Hall*, 2d ed., New York, 1917; Franklin Hichborn, *The System, as Uncovered by the San Francisco Graft Prosecution*, San Francisco, 1915; and Henry C. Wright, *Bossism in Cincinnati*, Cincinnati, 1905. Professor Robert C. Brooks in his work on *Political Parties and Electoral Problems* has an excellent chapter on "Machines and Bosses," terminating with a very useful bibliography in which are listed some of the reports of important graft investigation committees.

matter of absolute right.[6] Subsequent experience threw more light upon the whole problem of city and state relations, but the movement to guarantee the city more freedom of local action, though often eclipsed by other reform movements, has gone forward with increasing impetus.

The complete faith in local rule which was apparently held by many men a generation or two ago has recently undergone some modification. Complete decentralization is not the present ideal. Local autonomy and responsibility do not require complete local independence. In its present municipal programme the *National Municipal League* still opposes any power in the state legislature to enact special legislation for cities, and favors constitutional municipal home rule. In fact the intention seems to be to forbid even general state legislation regulating the municipal affairs of cities which adopt home rule charters unless the same laws be made to apply to all other cities. This leaves the door open, however, to municipal legislation applicable to all cities. Furthermore the report expressly proposes that "General laws may be passed requiring reports from cities as to their transactions and financial condition and providing for the examination by state officials of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities."[7]

In the section just quoted we have a proposal for state supervision of municipal accounts. To the writer it seems that modern conditions point to the need not so much of state *control* over municipal affairs as of extensive programmes of *coöperation* between state and municipal authorities in the fields of education, health, police, the regulation of public utilities, public works, and general planning, and also to the desirability of more intelligent state *supervision* over municipal staff functions such as finance, accounting, and personnel. By supervision we do not mean control. The state can do much, if it reform itself, to promote good government locally. It can support municipal research and information services, it can provide central departments staffed with trained men to assist municipal officials with their work, it can by legal enactment establish high standards of administration, and it can encourage cities to come up to these standards by offering state financial aid to those which do. We have, in fact, dared to suggest that for the larger cities even the national government might do much

[6] See chs. III, and IV, above, especially pp. 44–47.

[7] "Municipal Home Rule Constitutional Provisions," sec. 6, in Woodruff, *A New Municipal Program*, p. 306.

along these lines. We do not propose at this time the increase of either state or national legal control over cities, but rather the working out of plans of mutual help between state and national governments and the cities in the attainment of the common ends for which they exist. In the long run cities will do well to recognize the very law of their being, which is that they are created by and subordinate to the state. City and state governments should not be completely separated from each other.

3. **Popular control of the city government.** A somewhat heterogeneous group of reforms may be put under the heading of attempts to increase the control of the electorate over city government. This caption would be ample to cover all proposed changes in methods of nomination and election, such as direct primaries and the non-partisan election of municipal officers at separate city elections; secret voting; the abolition of corrupt practices; limited, cumulative, and preferential voting; the Hare system of voting; and the short ballot. It would also include the initiative, referendum, and recall, and every other device designed to perfect and increase the powers of the electorate. There are many persons who believe that true political reform must come from the voters themselves, and that by the betterment of electoral devices the voters can be made all-powerful in government. This underlying faith in democracy reminds us that Jacksonianism is not yet dead; but of course such a well-considered reform as the short ballot is not to be classed as a Jacksonian tenet but just the reverse. The political education of the electorate, the promotion of group discussion of common problems, and the perfection of public opinion are also worthy of mention under this head, as is the entire attack upon the spoils party in city affairs.

The aim of your true reformer would seem to be to make city government always the expression of the will of an intelligent majority of legally qualified voters. He favors the short ballot because it leads to more intelligent voting. He favors non-partisan primaries, if any primaries are needed at all, secret non-partisan municipal elections on a day separate from that of state and national elections, and the abolition of all forms of corrupt practices and fraudulent voting, because in these ways he hopes to dethrone the boss and to give the city over into the control of a thinking majority. He supports such a scheme of proportional representation as is embodied in the Hare system because it tends to eliminate chance and to defeat gerrymandering in the determination of the control of the city council. It

seems, in fact, to ensure majority rule with minority representation, and at the same time to render unnecessary the holding of primary elections. He stands behind the initiative, the referendum, and the recall not because he wishes to destroy the powers of the city council, but rather to supplement and occasionally to correct its works. Above all he favors every form of political education which is designed to free the voter's mind from prejudice, partisanship, and the holding of merely traditional views.

A survey of these various proposals makes it appear that the reformers are not in agreement upon either fundamentals or details. Their aim is perhaps the same, namely, to give the mass of voters a more effective control over the government. Their disagreement comes in the matter of methods of procedure. Some still seem to hold to the view that the way in which to increase the voter's powers is to increase the number of governmental activities in which he may participate directly. The reformers in this group advocate more direct primaries, direct legislation, and the popular recall of officers. The other group seems to say in effect that it is not a question of how much you permit the voter to try to do, but how effectively he can perform the duties he has. They take a more realistic view of the voter's interest and capacity, and urge that his tasks be limited to what he can and will do well. In short they urge the shortening of the ballot and such measures as the Hare system of proportional representation which makes possible the elimination of primaries while at the same time increasing the voter's freedom of choice.

The distinction here involved is much like that of which John Stuart Mill spoke when he said that "there is a radical distinction between controlling the business of government and actually doing it." [8] It is, we should say, the right and the duty of the voters in a democracy to control the government, but it is the business of the officials to do the work. Nevertheless the views of the two groups can be to some extent harmonized. In so far as the initiative and referendum are used only in extreme cases to control the officers of government they are undoubtedly justified. The recall, certainly, is merely an instrument of control. As to direct primaries the point is not so clear. To the writer it seems, however, that the choice here is not between having responsible public officers or the voters make the nominations, but between having them made by the voters themselves, however imperfectly, and having them made by unofficial and

[8] *Representative Government*, ch. V.

largely irresponsible party machines. When the latter choice is presented there appears to be much justification for direct nominations.

In the opinion of the writer the soundest reform proposals lie along the following lines:

(a) the short ballot, with its probable tendency toward elimination of "the invisible government;"
(b) rigid application of the merit system and such supporting reforms as will take away the sustenance of the spoils party and thus tend to destroy the machine;
(c) the Hare system of proportional representation, with nomination by petition and the elimination of primaries;
(d) more thorough political education of the voters.

If these reforms could be carried out the electorate would have less work but more important work to do, it would be less hampered by the interposition of the political machine, and it would have more knowledge of its problems. But even if all this were done there would still be many indifferent voters (for "indifference" is a merely relative term), and the great mass of voters would still need leadership.

Here are two points which need to be emphasized. Long ago in America votes lost their "scarcity value." If only one hundred men in the city of New York were entitled to vote, it is not likely that many of the hundred would be absent on election day, but even then a few would be little interested, many more would be moderately interested, and a few would be keenly concerned about their public responsibilities. To-day, when over two million have the voting privilege in that city, who can deny that there will be the same and even more marked differences in interest among the electors? And when each vote counts for so little, or when the election is relatively uninteresting, or when the voter belongs to a party which is hopelessly in the minority, is there not added cause for indifference? It is wholly visionary to look forward to a day when the electors will all be equally and keenly interested in their public responsibilities. Leadership, and this is our second point, will always be necessary, and with leadership the organization of voters more or less loosely into parties for joint action. The few who are highly interested in political manipulation and who school themselves in this work, will naturally rise to the top. True it is that the tone and level of politics will be raised when the voters have been improved in quality, and the leaders will need to be more responsive to control, but the mass itself will not assume leadership. Therefore

the aim of the reformer should be to encourage leadership and to find newer and better bases for the political organizations which must exist.

4. **The organization of the city government.** A fourth *motif* is to be found in the demand for better municipal organization. It is the sustained interest of Americans in the form of their government which has led to the development of so many modifications of the original plan of city government, and the evolution of such distinctive types as the strong-mayor, commission, and city-manager plans. In its first reform programme the *National Municipal League* advocated the strong-mayor or independent executive plan, but in its second programme sixteen years later it had swung over to the recently devised city-manager plan, in which the executive instead of being independent is strictly controlled by the council.

Notwithstanding many disagreements upon details, and in spite of varying personal preferences among forms of government, the reformers are in substantial agreement upon certain fundamental principles. The first of these is that in each unified urban area there should be as far as possible only one local government. This involves the merger into one corporation of the city, the county, the school district, and all other local authorities, although in metropolitan areas some powers of local self-government may well be left to the component parts. Such a consolidation of local areas, it is hoped, will tend to simplify the problem of the voter, to center the responsibility upon a single governing body in a wholly visible way, and to eliminate much overlapping and duplication of effort. Ring rule is expected to decline as governmental organization becomes simpler, more visible, and more responsible.

A second point upon which agreement is almost complete is that the voters should elect only the important, policy-making officers, and that these should be few in number. This is, of course, the short ballot principle referred to above.

Most reformers are also anxious to see the complete abolition of the separation of powers in local government. The commission and city manager plans have demonstrated the safety and feasibility of unifying the powers of government in municipal affairs. In practice this unification means the restoration of the council to a position of complete control over the city government, for the reason that no one seriously proposes to establish the dictatorship which would result if the entire power of local government were put into the hands of an

elective mayor. If the council be small and single-chambered, as is required by the short ballot principle, the centralization of power and of responsibility has been made almost complete.

At the same time, however, the majority of those who have studied the problem with care are convinced that the functions of legislation and control on the one hand are so distinct from that of administration and call for the exercise of such entirely different talents, that those who do the work of administration should be a separate group of men and women, specially trained and adequately compensated for their work. In other words the expert must be given an assured place in the municipal organization. Politics must be separated as much as possible from administration. The political branch or council should exercise control, of course, but the administrative branch should be given such written guarantees in the charter as will enable it to do its work without political interference.

Furthermore, the administration should be organized as a single integrated system upon the hierarchical principle, tapering upward and culminating in a single chief executive officer. The reformers generally abandoned the commission plan of government in favor of the manager plan not merely because the former failed to separate politics from administration, but also because it fell short of establishing a completely unified administration. Under the commission plan the administration had five heads instead of one. The manager plan corrected this defect. It enabled the city council at will to select the most capable administrative head it could afford to employ, and to hold him singly responsible for the entire administration.

Here are, then, the organic principles generally agreed to by the reformers: complete consolidation of the local government, the short ballot, the unification of powers, the separation of functions, and the centralization of administrative supervision in one man under council control. This is, of course, in essence the city-manager plan. It must be said in passing, however, that many persons have not conceded the superiority of the city-manager plan over the strong-mayor plan. We cannot, therefore, speak of perfect unanimity among all reformers upon the points relative to the separation of powers.

5. **The administrative organization and process.** In general the reformers have given little attention to the process of legislation by city councils, but on the other hand they have given prolonged consideration to municipal administrative methods. Those who have given special study to these problems are much impressed by their

importance. So true is this, in fact, that many of those who are connected with the municipal research bureau movement put reforms in administrative technique above all others in the programme. They believe that city administration can be made economical and efficient, and that many other reforms must wait upon the progress of this one.

It is pertinent to repeat here the fact that practically all branches of municipal administrative work are difficult and technical and call for the employment of experts; that experts cannot be obtained and retained by popular election; that the reformers hold that the entire administration should be organized hierarchically under the direction of a single trained person; and that they further believe that he should be under the control of and in close contact with the council. Beyond these fundamental principles of organization are a number of others perhaps not less important.

The administrative organization, it is believed, should be compact, and should be composed of a relatively small number of departments. Work should be apportioned among these departments according to its nature and not according to its purpose. Each department, with few exceptions, should be headed by a single commissioner, not by a board.

Wherever possible the merit system should be used in the selection of employees, who should then be given indefinite but not absolutely assured tenure, adequate salaries, good conditions of work free from politics, and the opportunity to make the civil service a life career. This is in some respects the central reform of all, the one upon which all other municipal reforms depend.[9] Complete eradication of the spoils system is the *sine qua non* of the destruction of the power of the spoils politician, and until he is gone there will always be a strong force fighting against all other reforms.

Aside from the problem of personnel there is the question of proper financial methods. Reformers generally agree that there should be a single central finance department, receiving and handling all of the city's funds. Furthermore there should be a centralized executive budget system, a simple and uniform system of municipal accounts, and a scheme of reporting results which will be understandable to the public. We are compelled, of course, to be exceedingly vague at this point. Numerous other matters might be mentioned, such as central-

[9] Charles W. Eliot's words were that "reform in the civil service . . . is the fundamental governmental reform, the reform on which all other improvements in national, state, and municipal administration necessarily depend."

ized purchasing, but enough has been said to indicate that the aim of this branch of municipal reform is to make the average city as efficient in business affairs as is the best managed private corporation.

6. **The urban judicial system.** Of great concern to the city government, but largely beyond its control, is the problem of the organization and procedure of local courts. The need of reform in this field has long been felt by intelligent members of the bench and bar, and it is they who have organized the *American Judicature Society* to foster the needed legislation. Four principles seem to stand out clearly in their proposals. *First*, there should be in each metropolitan community a single unified court or system of courts with some powers of internal self-government. It is expected that this will tend to promote the dignity of the courts and the efficient handling of judicial business. *Secondly*, the judges should be learned in the law and should be appointed, if possible, for long terms and at good salaries, the fee system of compensation to be abolished entirely. By these means, perhaps, the bench can be farther removed from politics, and certainly the work of the judges can be raised to higher professional levels. *Thirdly*, the judges should be permitted and encouraged to specialize in different types of cases, and the court should be divided into sections for this purpose, but the judges should all constitute one panel, and should be required to assist each other, so that one might not be sitting idle while another was confronted by an overloaded calendar. *Finally*, there is general agreement that much can be done to simplify the procedure in minor cases, to reduce the costs to litigants, to provide skilled defense at public cost for accused persons who have not the means to provide their own attorneys, to give legal advice to the poor at low cost, and generally to give the man or woman of small means a fair degree of equality before the law as compared with persons of greater wealth.

7. **Municipal functions and miscellaneous.** Whoever tries, as we have here, to set down in a few pages even the bare elements of an extensive reform movement, is impressed upon reading it over by the inadequacy of what he has said. The problems of city life and government are so multifarious and complex, and the agencies working for betterments are so various and scattered, that it is a sheer impossibility fully to visualize them all at once. What do the reformers say about the city's relationship to the public utilities, about municipal ownership, about the general tendency toward the expansion of municipal functions, about city planning? What have they to propose in

detail with regard to municipal taxation, bond issues, the contract and day-labor methods of doing public work?

Some of these questions lie beyond the scope of this chapter. Others can be answered in only the most general terms. Quite obviously the reformers are not agreed as to the desirability of increasing municipal functions. A man may classify as a reformer because he favors the Hare system of voting in city elections, but he may be unwilling to have the city add a single function to its already extensive list. As a group, however, the reformers have confidence in their city governments. They wish to see the cities more active in the promotion of human welfare. They are not afraid to see the city assume new burdens. Some would say, perhaps, that more genuine progress will be made if the city first becomes fairly efficient and then takes on new functions. Another would hold that the assumption of new burdens will compel the city to become efficient. The author can only say that the principal purpose of municipal reform appears to him to be to enable cities to promote better the health, safety, morals, education, and general welfare and convenience of the inhabitants. A strong and effective city government will most surely reach out for new things to do. Whoever opposes such an expansion of activities should work to keep cities boss-ridden, corrupt, ignorant, and inefficient,—but any taxpayer who thinks that he will have cheaper government under such conditions is likely to find himself mistaken.

The reformer seeks generally not merely an expansion of the local services, but also a definite coördination of all functions according to some harmonious plan or end. To him the term "city planning" means not merely the physical improvement of cities but also the administrative integration and perfection of the whole. He wants to see the police and the courts and the social agencies and the schools and the parks all working in unison to a common end, without waste and without frustration. His vision goes beyond the pedestrian goal of the attainable. He looks upon the city of the future as an association of consumers in which the compulsory element has been forgotten, and in which all the electors exercise with equal right a common intelligent control over an administration which brings all art and all science into the service of the people.

THE FUTURE OF AMERICAN CITY GOVERNMENT

At the end of the chapter we turn to consider the future of city government in the United States. It is of course unscientific to prog-

nosticate on the basis of as little reliable data as we yet have about the problem, and one runs grave risks of having one's prophecies proved untrue in a few years time. In spite of all, however, we venture a few pages of "looking forward."

In the United States, as perhaps in most modern democracies, many people assume an utterly cynical attitude toward public affairs. This attitude, unfortunately, is something more than a pose. Speak to them of improving the personnel and the processes of the local government and they will perhaps reply with the gist of Kipling's "General Summary,"

> As it was in the beginning
> Is to-day official sinning,
> And shall be forevermore.[10]

They suffer in their public capacity from something akin to an inferiority complex. Little thinking how their words reflect upon themselves as citizens they assert that the city government is full of "grafters," and that it is inefficient to the point where it cannot be trusted to carry on its present functions, much less to take on new. They shrink, therefore, from the harsh struggles of public life and retire into the privacy of their businesses, their clubs, and their families.

It is interesting to observe, in passing, how assiduously the idea of municipal inefficiency is spread abroad by those persons to whose interest it is to prevent the increase of municipal functions, and who are to some extent directly responsible for the corruption and inefficiency that exist. The anti-muncipal-ownership literature is filled with this general idea served up in many forms. But be that as it may, a great many city-dwellers of limited experience have become imbued with the thought that private business is highly efficient and honest while the public business is shot through and through with graft and inefficiency. Now no one is in a position to prove such a proposition, and it is extremely doubtful whether the evidence will support it. The peculations in public business, national, state, and local, probably do not approach in volume one single form of business dishonesty,—the sale of fraudulent stocks and bonds. Price-fixing, black-listing, collusion, illegal monopoly, the sale of impure foods and fabrics under false pretenses, the substitution in delivery of articles different from the ones purchased, and a host of other unlawful or

[10] *Departmental Ditties.*

immoral acts are practiced daily in private business, as every intelligent merchant is aware. Throughout the land the more honest and responsible businessmen have been compelled to organize in an attempt to bring about more honesty in business, and it is to their lasting credit that they have done so. "Reform" is the order of the day in private business as in public, and it is fully as much needed, yet how many persons expect to live to see even that day when we shall have strictly honest advertising?

Along with this question of honesty goes the problem of efficiency. No one would deny that many local governments are wasteful and at times extravagant in the expenditure of public funds. The error lies in the assumption that all private business is vastly superior in this respect. Recent investigations by unbiassed authorities have clearly demonstrated that this is not true, and have thereby helped to corroborate the evidence which has been piling up for generations in legal proceedings in bankruptcy cases.[11] The story of governmental inefficiency is a matter of public record, and because so much is recorded many people are willing to believe that things are much worse than they are reported. The failures of private business are less known to the public but are none the less real. Superhuman knowledge and skill are not to be found among the directors of private business any more than among the equally human beings who manage municipal and state affairs. There are unquestionably many departments in city government which are being handled as honestly and intelligently as are the best-managed private businesses.

The writer has set down these points because he feels that one of the principal obstacles to governmental reform is the widespread notion that governments, for some unexplained cause peculiar to themselves, are incapable of being improved. City governments are hard to reform just as private business is, but neither task is impossible, and a free people does not preserve its institutions by fleeing from necessary but difficult work. The affairs of men will not stand still. The progress of time inevitably brings new conditions and new problems. Changes creep in unawares. Therefore, unless a people actively bestirs itself to make intelligent reforms continuously, the course of events may easily bring about the decadence and destruction of its

[11] See for example *Waste in Industry*, by a committee on elimination of waste in industry of the Federated American Engineering Societies, New York, 1921, and also the *Elimination of Waste* series now being published by the United States Department of Commerce.

best institutions. Charters and ordinances made yesterday to fit the needs of yesterday must ever be made over to fit the needs of today. Like other things of this world, reform itself is not permanent, nor does it come without effort.

But in truth we do not need to rest our case upon mere logic. We have not complete but really extensive records to show that city government in America to-day is much more honest, efficient, and democratic than it was a generation or two ago. New York has not repeated the Tweed ring scandal although men still grow rich in politics in that city. In other places, too, the general testimony of observers attests that government is cleaner than it used to be. Considering the tremendous sums they raise and spend we may fairly say that city governments to-day are tolerably honest. The labor of the reformers has not been all in vain.

To what causes may we ascribe this increasing honesty? While it is difficult to apportion credit with accuracy, we can at least indicate some classes of persons and some events that need to be taken into account. First we must mention the reformers themselves, the numerous men and women,—preachers, writers, teachers, club leaders, newspaper men, investigators, office holders, ordinary citizens, and even some politicians, self-sacrificing and public spirited all,—who have borne honorable parts in the long struggle for clean city government. Secondly we need to give credit to the still more numerous voters who, while they did not take the lead, saw the light sufficiently to follow the active reformers.

But these leaders and followers have been greatly aided in the municipal reform campaign by facts and events over which they had but little control. Among these we set down the rapid spread of common school and high school education in the past two generations, the growing independence of voters aided by the direct primary, the practical elimination of the public utility corporations from municipal politics in many cities through the establishment of state regulation of public utilities, the abolition of the saloon and the elimination therewith from local politics of a very evil influence, and finally the enfranchisement of women. We are naturally unable to make a precise evaluation of the influence of each one of these factors, and we would not assert that others need not be considered.

The upbuilding of more honest standards in city government has been accompanied by the improvement of administrative methods. Efficiency and economy have been promoted in a number of different

ways. The merit system has been established to some extent in many places, and has resulted in building a more professional spirit in city administration, and in the formation of national professional societies which study some of the problems of cities. Numerous cities have also begun to classify and to standardize all public positions, to budget their expenditures, to adopt wiser debt policies, to centralize in order better to control the purchasing of supplies, to plan their work before beginning it, to reorganize their administrative departments in the interest of economy and effectiveness, and to improve methods of work and of accounting in a hundred different ways. It is in such matters as these that municipal research bureaus and professional societies have given invaluable aid.

Not least of all has been the increase of popular control over the city government. Through the secret ballot, the direct primary, the shortening of the list of elective officers, the centralizing of responsibility in conspicuous places, and the introduction of the initiative, referendum, and recall, the voter has been given a more direct influence over the conduct of the city's business. Straight-ticket voting has become less common than it was, and therewith the power of the party machine has somewhat declined. Here again we have no means of making precise measurements of the changes that have taken place, yet many competent observers agree that there has actually been much progress.

Such is a thumb-nail sketch of what has been accomplished in recent decades. The future will probably be a continuation of the past. There will be no sharp breaks. Advocacy of the commission plan of government, and of the initiative, referendum, and recall, are already upon the wane, yet we must not expect to see cities which now have these institutions hastening to discard them. Such proposed innovations as the Hare system of proportional representation may spread slowly, but there is no reason to expect American cities to rush forward along this line. The city-manager plan of government will undoubtedly continue to make gains at the expense of other forms. Municipal business methods may be expected to show solid if fairly slow progress.

In fine we do not look forward to the immediate advent of the municipal millenium, nor do we fear a cessation of reform. It would be pleasant, indeed, to paint Utopian pictures of the future city as perfectly planned and perfectly functioning, free from corruption and waste, and serving with superior efficiency the sublimated democracy

which controlled it. However pleasing such a scene might be to enthusiasts, our knowledge of mundane conditions would compel us to write across its face the word "Untrue." We look only for plodding and piecemeal reform. There is needed to-day, and perhaps there will always be needed, a large number of devoted citizens who will give much of their time and thought to municipal betterment. We need specialists here as well as in other fields. The multitude will not lead the way, but it can be induced to follow capable leaders.

Herein lies the challenge to the young people of ideals and education who are constantly pouring forth from institutions of higher learning into the maelstrom of city life. They cannot escape city problems if they would, for most of them will find their work in cities. If they feel at all the responsibilities of citizenship they will be unable to refrain from taking some part in the solution of ever-present local problems. To the extent that they are able to achieve success in the reforms which they undertake to support, to that extent will they have the satisfied sense of having served their country well. They may enter upon the work of intelligent municipal reform with the firm assurance that where so much has been accomplished in forty years of groping effort, still more can be done by a generation which has already so much light to show the way, and that when they have done their bit there will still be left some work for another generation to do. No one need fear the coming of a time when American cities will not offer rich opportunities to those who would live the strenuous life of unofficial public service. The call is a call to hard work, and the place to begin is at home.

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